## LEGISLATION.

***The Nayar Regulation Amendment Bill.*** (Continued.)

PRESIDENT: We are at Clause 43. There is the amendment of Mr. G. Parармesvaran Pillai pending.

***Clause 43.***

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I do not move it.

The following amendment was not moved:—

MR. G. PARAMESVARAN PILLAI:

"Add the following as Clause 44 and renumber the subsequent clauses:—

(i) "Where a share of a dwelling house or other property belonging to an undivided tarwad has been transferred to a person who is not a member of such family and such transferee sues for partition, the court shall, if any member of the tarwad being a share-holder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such share-holder, and may give all necessary and proper directions in that behalf.

(ii) If, in any case described in sub-section (1), two or more members of the tarwad being such share-holders, severally undertake to buy such share, the court shall follow the procedure prescribed by sub-section (2) of the last foregoing Section.

(iii) When any property is directed to be sold under the above provisions, the court ordering such sale shall follow, so far as may be, the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees.

(iv) An order for sale made by the court as hereinbefore prescribed shall be deemed to be a decree as contemplated in the Code of Civil Procedure."

The question that Clause 43 as amended do form part of the Bill, was then put to the vote and carried.

Clause 43, as amended, was added to the Bill.

***Clause 44.***

The following amendment was not moved:—

MR. T. K. VELU PILLAI:

Add the following at the end of the clause:—

"Provided that the children of such Nayar males as were alive on the day the Nayar Regulation, I of 1088, came into force may succeed to their separate or self-acquired property even though their mothers were dead on or before that date."

MR. P. K. NARYANA PILLAI (*Ambalapuzha*): I beg to make the following motion, that is to say, the following sub-clause may be added as sub-clause (*c*) to the existing Clause 44:—

"*Or affect the validity of any marriage where the female marries the male without notice of and in ignorance of prior subsisting marriage of the same male owing to misrepresentation, fraud or mistake, practised on the said female or her guardians, as the case may be, or affect the status and rights of children born to such parents.*"

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The existing Clause 44 provides that "the provisions of this measure will not affect the existing rules of marumakkathayam law, custom or usage except to the extent hereinbefore expressly provided for, or confer any rights on the parties to a marriage dissolved before Regulation I of 1088 came into force." That is practically Section 26 of the existing Regulation. So that, I beg to append a third clause to the effect that nothing in the Regulation shall—

"*affect the validity of any marriage where the female marries the male without notice of and in ignorance of any prior subsisting marriage of the same male owing to misrepresentation, fraud or mistake practised on the said female or her guardians, as the case may be, or affect the status and rights of children born to such parents.*"

The reasons underlying my motion are as follow: The Nayar community hitherto has been a polygamous community, permitting polygamy not only with respect to husbands belonging to the same community, but also with respect to husbands belonging to other communities with whom marriage is possible. Such being the case we have enacted in a prior Section that polygamy is to be put down and monogamy is to be enforced. That decision has been arrived at by the House without taking into consideration the possible hardships in that direction. It may be that, in the case of a marriage hereafter to be celebrated or solemnised, the husband might be already a married person whose marriage may be subsisting unknown to the wife to be married under this Regulation. The consequence of such a step would be that, under the Regulation, not only will the marriage be void, but the children begotten of such marriage will be undeniably illegitimate not entitled to any right contemplated under the Regulation. Now, Sir, first of all, I am bringing to the notice of the House the extreme harshness that would be caused by such a provision. The tendency of modern legislation has been in the direction of legitimation wheresoever it is possible. So much so, if you refer to the course of legislation elsewhere, you will come across a number of affiliation Acts and legitimation measures some of which are purposely to be worked even retrospectively. We have also Acts in colonial legislations to the effect that, even after the death of the father of the illegitimate child, it is open to the mother to get a legitimation order. Further, there are also Acts which go to the extent of saying that, when an unmarried pregnant woman desires that the child to be born should be legitimated, she is at liberty to apply for the legitimation of that child, even before its birth, as against the father of the illegitimate child, by affiliation proceedings. When such is the extent to which legislatures have been prepared to go in their anxiety to legitimate children, we can more or less imagine the humane and humanitarian tendency underlying the course of modern legislation. With that aspect of the question before us, let us examine the result of a marriage taking place in Travancore where the husband happens to be a person belonging to North Malabar or Tanjore with a wife existing according to the marriage that he has contracted in those parts. In

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[Mr. P. K. Narayana Pillai.]

ignorance of that fact, a girl in Travancore happens to be married to such a man. The marriage takes place here, children are born and through no fault of the children or of the mother, the law will interfere, reduce the wife to the position of a concubine and bastardize the children. That is a plight for which the innocent parties are not, in the least, responsible. Marriage according to us has been, in the main, a matter of agreement between the parties. To all agreements and contracts, the general rules of contract should apply. A number of invalidating circumstances like fraud, coercion, undue influence, mistake, and other things, would invalidate a contract and set the parties free.

PRESIDENT: In other words you want polygamy to be recognised?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes, in a modified form. We are at the threshold of the monogamous system of marriages. It is extremely difficult to provide the necessary safeguards to combat bigamy or prevent its perpetration. In advanced countries like France in the interests of preventing bigamy, registers of supersubtle qualities are prescribed. I would refer to an article in the Journal of Comparative Legislation where the writer says that even registers so kept, with all the caution and legal experience of great men, are being eluded. So much so, bigamy is being resorted to in spite of the repeated efforts of legislators. When such is the case, when something like marriage is being contemplated in Travancore for the first time as the result of the compromise between my friend Mr. Subba Aiyar—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Mr. Changanachery Paramesvaran Pillai.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*):—or Mr. Krishna Aiyangar—I am mentioning only two protagonists in the matter, and do not imply that other persons have not actively interested themselves in it—I am submitting we have not thought of introducing a net-work of registers; nor have we provided for any such contrivance in the present measure. With respect to people from other parts who are allowed to marry Nayar females in Travancore, nothing like marriage registers is available except in Cochin and that in a faint way. Persons from other parts are at liberty to marry Nayar females in Travancore. It is impossible for this Council to enact that a marriage register should be maintained in places outside Travancore. As to British India, there is nothing like a marriage register maintained there, and the attempt of Mr. (now Sir) Sankaran Nayar, to introduce a marriage register has proved futile. Under these circumstances, the question whether a future husband is already married or not, is capable of solution only on a representation from the husband. If a husband is so minded as to bring discredit on the wife he is proposing to marry, he may so mould his conduct as to bring misery to the poor wife and children. In view of that fact, in the absence of marriage registers, I

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am submitting the House will have to take a lenient view of the situation and allow me to graft this motion on the amendment carried by Mr. Hoogewerf. Hence I move this amendment, and in all fairness, I hope the House will be indulgent enough to concede it in my favour. Therefore, Sir, I move that the following be added as sub-clause (c):—

"*or affect the validity of any marriage where the female marries the male without notice of and in ignorance of any prior subsisting marriage of the same male owing to misrepresentation, fraud or mistake practised on the said female or her guardians, as the case may be, or affect the status and rights of children born to such parents.*"

MR. A. HOOGEWERF (*Nominated*): I beg to know whether a man who hails from Tinnevelly or Madura will not think three times, four times or even half a dozen times, before marrying a Nayar wife, considering that the changes in the law have brought about difficulties in many directions.

PRESIDENT: Are you speaking or putting a question?

MR. A. HOOGEWERF (*Nominated*): I am asking him a question. Considering that conditions are so much altered, will the outsider be at liberty to marry a Nayar female?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is he at liberty to put a question after I have sat down?

PRESIDENT: He had put the question before you sat down.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): What is the question, please?

MR. A. HOOGEWERF (*Nominated*): Will not a man from Tinnevelly or Madura think half a dozen times before he forms an alliance with a woman on this coast, considering that conditions have altered so much, divorce has become so very difficult and the marriage tie so fast?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is a pretty difficult question to answer, because the matter rests with the man that comes from Tinnevelly or Madura. But for the satisfaction of my friend, I would answer him, imagining what would take place. First of all no villainous man can be deterred by any number of enactments. And in the case of an ignorant man, in spite of the presumption that every man knows the law, misbehavior unfortunately takes place. I have myself come across people who, in spite of the fact that the Nayar Regulation is in force, have divorced their wives, and have allied themselves as wives and husbands with other people. When questioned, they say that they never knew of any enactment like the Nayar Regulation. Under these circumstances, such things may also take place. Instances are also not wanting, though rare, where persons personating as those eligible for marriages in Nayar families have contracted marriages with Nayar females. If persons are prepared to go to that length, the milder offence of suppressing and disguising one's own marriage may be easily imagined.

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[Mr. K. Parameswaran Pillai.]

MR. A. HOOGEWERF (*Nominated*): Has not Jack built a house for all those people who are villainously inclined and want to keep their marriages a secret?

PRESIDENT: The question seems superfluous.

MR. A. HOOGEWERF (*Nominated*): Such cases are not rare.

PRESIDENT: That is his answer. You will have to take it.

MR. M. N. PILLAI (*Trivandrum*): I second the amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I have been very carefully thinking over the amendment and I must confess that I hesitate a good deal to accept it. The first part of the amendment says that the marriage is valid where the female marries the male without notice of and in ignorance of any prior subsisting marriage. The second part says that the Regulation shall not affect the status and rights of children born of such marriages. In regard to the second part, I have absolutely no hesitation to accept it. It appears to me that some provision must be made in such cases making the children who are born of such marriages legitimate, although the marriage itself may be null and void. In support of that position there is the Scotch Law. Eversley, in his book "*Domestic Relations*," says in page 78 thus:—

"A second marriage while the first is undissolved is null and void without any sentence, although under such circumstances as would not render the bigamist criminally liable. The children of the second marriage are in England illegitimate, though both parties, or at any rate one of them, may have contracted the union in perfect good faith and in ignorance of the impediment of their marriage. This kind of marriage is called by the canon law *matrimonium putativum*, and is recognised by the Scotch law, which follows the canon so far as to render the children of such union legitimate, though the marriage itself be null. This also seems to be the law in several of the United States."

Therefore, so far as the children are concerned, we have got that high authority to support us. Therefore, I have no objection to accept that portion of my learned friend's amendment.

In regard to the question of declaring such marriages valid, I feel considerable hesitation, because, if the marriage is validated, the parties will get several rights incident to a valid marriage. For instance, in Section 3, illustration (*b*), it is stated:

"B, a female, who has married A, refuses to cohabit with the latter without just cause. A may bring a civil suit for restitution of conjugal rights."

This will lead to difficulties. Let me quote an instance. A certain man who has already married a wife subsequently induces, by fraud, a Nayar girl to marry him. The marriage, according to law, is null and void, and the man is liable to punishment under the Penal Code. It turns out subsequently that the marriage was due to ignorance on the part of the female or fraud perpetrated on her by the husband. The amendment says that such a wife should be entitled to ask for restitution of conjugal rights if the husband refuses to cohabit with her, so that such a man would be entitled

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to enjoy the benefit of a second wife even during the continuance of a prior marriage. This may also lead to several other complications which I am not able to foresee just now. On the whole, it appears to me, Sir, that it will lead to insuperable complications which we may not be able to foresee at present. Therefore, I feel great difficulty in accepting that portion of my learned friend's amendment, although I shall be very glad to accept the second portion of the amendment rendering the children born of such union legitimate. The amendment may also have the effect of rendering indirectly the provision that we have already enacted in regard to monogamy, ineffective. Because, if we accept this amendment, the wife may say that she was defrauded by the husband and thereby take shelter under this Section. I am therefore unable to accept that portion of the amendment. I can accept the other portion if it is split up.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am in favour of the amendment. Mr. Paramesvaran Pillai concedes the necessity of adopting the second portion of the amendment, but would, on no account, accept the first. Sir, inheritance depends mainly on marriage. I can understand the attitude that this Council showed in voting upon the question of monogamy. Monogamy is considered to be an excellent institution and therefore we took the first step towards the process of evolution with monogamy as the ideal. That amendment which made compulsory monogamy the law in the Nayar community was proposed, if I remember correct, by my friend Mr. Hoogewerf. It is well known, Sir, that the vast bulk of the Nayar community is not in favour of that measure.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): How does he know that?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I am a Nayar; I have known the Nayar community and have seen more of the Nayar society than Mr. G. Paramesvaran Pillai.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I withdraw that question in the light of the answer given.

PRESIDENT: You cannot withdraw that now.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Therefore I have once more to bring to the kind consideration of the House —

MR. A. HOOGEWERF (*Nominated*): Has he consulted Nayar women?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Surely, because the Nayar society is composed of Nayar women as well.

MR. A. HOOGEWERF (*Nominated*): How many women has he consulted?

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I do not feel inclined to answer any further—

PRESIDENT: I do not allow that question.

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[Mr. A. Hoogewerf.]

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Because that information is not necessary to enable the House to come to a conclusion.

PRESIDENT: I have already said that I am not going to allow that question.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): That is all right, Sir.

I once more point out for the consideration of this House that compulsory monogamy, however excellent as an institution, is not at present in the grain of Nayar feeling. Because there were technical difficulties in violating the principle that has been already accepted by the House, the Nayars, much against their will, much against their inclination, are obliged to acquiesce in the present rule. Now, when it is seen that this rule regarding monogamy is the result of an attempt at a kind of universal social reform, we ought to give facilities to the people in order to enable them to take advantage of institutions which were not considered immoral by the Nayar society for hundreds of years. I do not want to change the present Section. I am only saying that, if any body, whether it be from Madura or from Cochin or British Malabar, be he a Tamil Brahmin, or a Telugu Brahmin or a Nambudiri Brahmin or a Kshatriya, or a Nayar himself, comes to Travancore and if he is a good man, good enough for a son-in-law (*laughter*) and certainly good enough for a husband too and if he wants to marry a Nayar girl, the virtual provision that the girl or her relations should be put to the necessity of opening up communications with everybody in Madura, Cochin or British Malabar in order to investigate the question whether he is already married in any of those places, before they accept or reject such a candidate for the hand of that girl, is a principle which will work very great hardship in actual practice.

MR. A. HOOGEWERF (*Nominated*): Will Mr. Velu Pillai explain how, if a Christian gentleman from South Africa goes over to Travancore and wants to marry a Christian wife, how it could be found out whether he is a Christian or a Jew, or whether he is married or unmarried?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Mr. Hoogewerf knows the Christian society very well and he knows there are Church registers and other means of knowing the actual state of things. Further, because there is this practice in the Christian community, I am not for saying that the Nayars should, without going into the merits of the question, adopt it.

MR. A. HOOGEWERF (*Nominated*): I am speaking of a case where a gentleman from South Africa comes here neatly dressed with watch and chain and wants to marry a Christian girl here. How are we to find out whether he is a Christian or whether he is married or not?

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PRESIDENT: It is your own fault if you do not know it. You are expected to make the necessary enquiry before giving the girl in marriage.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): That is an individual case for courts of law to deal with when any trouble arises. I am only talking of the general principle.

Now, Sir, in Travancore there is a further difficulty that, in the case of a woman who has neither father nor mother living and who has to depend on the tender graces of her uncle or some more distant maternal relation, if a man is coming forward to marry her and if he is to all appearances a good husband, the uncle in his haste to see his niece married and his responsibilities terminated, may not pursue all these lines of investigation which are open to others, and may give her in marriage to that apparently respectable and well-to-do person. For no fault of the woman she becomes his wife. If, later on, it is seen that the husband was one who was not straightforward and who wantonly withdrew all available information from the woman and her relations, does it mean that the woman should not take advantage of such a marriage, especially when we see that the so-called disgust of polygamy is a feeling that has been generated only recently. Sir, the women in the Nayar community, many good women among them, have lived for years, and they were perfectly satisfied with their position as *sapatnies*. When that has been the case, I do not think this amendment is objectionable at all. Moreover, there is the new rule engrafted in our statute on account of the generous labours of Mr. Hoogewerf asking Nayar women to be satisfied, to be restricted in their choice, even when they were innocent victims of the fraud of other persons who were guided by self-interest. That, I submit, would be unfair to the women and to their husbands.

MR. Paramesvaran Pillai raised the point that there might be difficulties about restitution of conjugal rights. If polygamy were an institution condemned by the society, restitution of conjugal rights might have been given up for ever. But it is not so. No doubt, in the long run, people may like to have monogamy made compulsory and then we could clearly lay down a provision making it compulsory.

I would also say, Sir, that in a contract, if a party is the victim of misrepresentation or such other invalidating circumstance, the contract is not void, but only voidable. It is for the person who was defrauded to make an election whether to take advantage of the contract or not. In such a state of things I do not think there will be any difficulty in accepting the amendment. If the amendment has the object of perpetrating a system which is thoroughly immoral or which is not known to the community and which is sought to be introduced for the first time into the community by Mr. P. K. Narayana Pillai, then I can understand the attitude of Mr. Paramesvaran Pillai. Mr. P. K. Narayana Pillai and Mr. Paramesvaran Pillai have indented upon the laws of Scotland and France. Even in the times when in the course of history England was opposed to France, France and Scotland were allies, so that this position of one of them depending upon Scotch law and



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[Mr. T. K. Velu Pillai,]

the other on French law is very interesting. Whatever that be the amendment will not work any mischief. It will only correct a defect of the existing law, and as Mr. Paramesvaran Pillai himself was prepared to recognise that the children born of such marriages should be legitimised. I would request him to go a little further and make these marriages valid, in consideration of the fact that the marriage contract was entered into in ignorance or by fraud or as a result of misrepresentation for which the woman was not at all responsible and of which she was the victim. In course of time, after the Nayar Society is able to understand the full significance of the law we are now passing, probably, a public spirited gentleman like Mr. Hoogewerf might bring up a suitable amendment. Sir, the amendment, therefore, is a very reasonable one and it is very necessary.

MR. A. HOOGEWERF (*Nominated*): Will not the Nayar wife herself revolt when she comes to know that the gentleman who came from outside has got another wife or wives?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): The Nayar wife will not, in all cases, revolt.

I would also say that I cannot relish the expression of a female marrying a male which connotes a spirit which is not agreeable to the Nayar community. I leave it to him so that he may consider the question. Although it is a tie between two persons, the usual expression in vogue among Nayars is "a male marries a female and not 'a female marries a male'. Not that it is a very significant fact or a very material point; but it would be more in unison with the spirit of the Nayar society. If Mr. Narayana Pillai would consider that once more and see if any change could be effected, I should be very glad. But the amendment is very necessary and I request the House, particularly the gentlemen who are from other communities, neither to import into the Nayar society ideas which are not prevalent among them but which have been taken from other places, nor impose them upon the Nayar community against their inclination, and against their will.

MR. JOSEPH PANJIKARAN (*Shertallai*): Is Mr. Velu Pillai aware that this has already been done when Section 9 was passed?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I do not want to repeal Section 9. I am only saying even if you do that, give the community some chances to have the advantage of the ideas which the society entertains as just and reasonable at the present day.

MR. A. HOOGEWERF (*Nominated*): Is Mr. Velu Pillai aware that a large number of Nayars including the Chief Secretary to Government voted for monogamy?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): They are all facts borne out by records. I am in a position to say that very important men of the Nayar community dissented from that and

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I do not want to say more about it. Several Nayar gentlemen of eminence—and some of them are sitting here—have told me that this is a law which the Nayar society does not want at present. I do not want to rake up that old question. I only want to request the House to consider the present state of the Nayar society and to see that they are not compelled to have an institution, whether it be good or bad, which is alien to them. We should allow them to have a gradual evolution.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Sir, to my mind, the effect of accepting the amendment will be to nullify the law that we have already passed. No doubt, Mr. P. K. Narayana Pillai refers us to the laws prevailing elsewhere. That, I believe, is due to his reading too much the *Journal of Comparative Legislation*. He also gave us illustrations where the children born of such marriages were legitimised. I do not know whether they were instances in which a first marriage was subsisting and the question of validity of the second marriage was in issue. My friend Mr. Paramesvaran Pillai referred to Scotch law and I do not know whether it is desirable to refer to any particular law here or there without knowing all the law on the subject there. I confess I do not know the Scotch law with reference to marriage, and whether there is the offence of bigamy or adultery in England or in Scotland. In England, I know, adultery is not an offence. I do not know whether it will be safe to draw an analogy from circumstances existing elsewhere.

But, if we go into the practical working of the thing, I think, as a practical man, that the amendment is beset with considerable difficulty. My friend referred to a man coming from elsewhere, from Tinnevelly or other parts having marriage in British India and not intimating the Nayar woman here that he was married already. The amendment, as it stands, does not restrict it to foreigners. It is equally applicable to Travancoreans, both the husband and the wife being domiciled in Travancore; so that, if a man married in Trivandrum marries another in Quilon, then also, the amendment, as it stands, will continue to apply, and what is wanted is not satisfied by the amendment as it is. We have enacted in this Bill that, if a husband does not like his wife or if the wife does not like the husband, whichever it may be, they could not dissolve the marriage nor would the court allow dissolution of the marriage if there are no sufficient grounds for divorce. In such cases, if the husband wants to marry another, this amendment would allow him to do so, if he falsely goes and tells another woman that he is unmarried. In other words, Section 496 of the Penal Code says that if a man who has already married a wife marries another wife during the subsistence of the prior marriage, he is guilty of bigamy and liable to be punished with two years' imprisonment and fine. In the case of such marriages, it is now sought to be provided that the wife and children should get the benefit of the marriage. Mr. Narayana Pillai also said that, in the case of the children, they must get their rights of a valid marriage, because they were not in the least responsible for their being brought into existence. But has he taken into consideration the condition of the first wife and her

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[Mr. T. K. Velu Pillai.]

children? Why should they suffer for the mischief committed by the husband? Why should they be deprived of their legitimate share in the property of the husband for the sake of the mischief of the husband? She has also got a right for the restitution of her conjugal rights. If the first wife brings in a suit for restitution of conjugal rights, and, if, at the same time, the second wife also brings in a suit for the restitution of conjugal rights, what should the court do? Are you to protect the rights of the woman, who, as I would prove later on, also might have been a party to the mischief of the husband? Should the wife, who was not a party to the mischief, suffer for the mischief of her husband? That, I dare say, is very unfair. Why should the children of the first marriage forfeit any of their rights for the mischief of their father? Apart from all this, such a provision as is sought to be introduced by this amendment is quite unnecessary. If the husband is rich, he has only to go to a woman and say that if the question of bigamy is raised later on she might say that she was deceived by him and he would accept the guilt and neither party will be a loser, because the marriage would, according to this amendment, be valid and the children would also be legitimate. That, I say, is giving room for affording a premium to commit the offence of bigamy. That would be nullifying the effect of the legislation that we have already passed. It may be that monogamy is unsuitable to the Nayar community. I am prepared to say that I was one of those who voted against that; but I do not think it will be well to go behind a provision that has already been made to the prejudice of those who would be under the impression that the husband would have only one wife and would therefore give all his properties to that wife and her children alone. Therefore, I cannot subscribe to the amendment.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I ask Mr. Subba Aiyar whether there are not women who would not, under any circumstances, marry a second time?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): There may be.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Would it not be very hard if such a woman is deceived into marrying a person who is already married to another?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I supose the law is sufficiently elaborate to give her the necessary remedy. She has got a right to sue the husband for damages compensating her for loss, if the husband is a man of wealth. Of course, if he is a pauper nobody can complain. In the case of her children, there are the criminal courts to allow maintenance to them. So, we see that the law is sufficiently comprehensive to make compensation in such cases.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I draw the attention of Mr. Subba Aiyar to the fact that damages alone would not be enough remedy in such cases? Money is not the only thing that people desire to have. The moment it is proved that he has a prior

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wife, the second marriage is invalidated, and in case the second wife is not prepared to marry another man, she would never have the chance of having a husband afterwards.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : I can only say that, in such cases, she can only blame her lot if she is not prepared to marry again. Suppose her husband dies suddenly or commits murder and is sentenced to be hanged. What would she do if she is not prepared to marry again? So also, here, since she was defrauded by her husband, she will have to coolly submit to her lot and live in penance ever after.

MR. A. HOOGEWERF (*Nominated*) : After what Mr. Paramesvaran Pillai and the Law Member have clearly stated, there is not very much for me to add. This question of monogamy was before this House and it was discussed thread-bare, and by a majority of six members, if I remember right, many of them being Nayars, including the Chief Secretary to Government, who is a Nayar, the amendment was passed.

Now, the attempt made to-day to go behind it is not only unfair but almost an insult to the good-sense of the House. There are hard cases everywhere ; for instance in the Christian community itself. There are rascals in the Christian community who pretend to be bachelors and even get marriage certificates from priests and come and marry a second time during the continuance of a prior marriage in spite of all manner of registers kept in the Church. There are many fellows who are in jail for bigamy. There are hard cases everywhere. There are rascals who will continue to be rascals in spite of the laws that have been enacted. Now, both the civil law and the canon law, as explained by Mr. Paramesvaran Pillai, have made provisions for marriages of that kind.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I know if he is aware that Messrs. Changanacherry Paramesvaran Pillai, P. K. Narayana Pillai, N. Padmanabha Pillai and T. Kumara Pillai were not in favour of monogamy?

MR. A. HOOGEWERF (*Nominated*) : He could refer to the proceedings and see.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I know that ; I am only asking whether Mr. Hoogewerf is aware of that.

MR. A. HOOGEWERF (*Nominated*) : I know some Nayar gentlemen voted against it ; one of them is Mr. Velu Pillai, I think. (*Laughter.*)

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask if the opinion of these gentlemen does not establish a different state of things in spite of the fact that one Nayar gentleman on the official side voted for monogamy.

PRESIDENT: It is a matter of opinion.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Mr. Hoogewerf referred to the official member who voted for monogamy

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[Mr. A. Hoogewerf.]

and said that that was the sense of the Nayar community, because that officer happens to be a Nayar. I am asking if the four names put together, either jointly or severally *(laughter)* would raise a contrary presumption.

MR. A. HOOGEWERF (*Nominated*): He is not the only Nayar who voted for monogamy. There are four or five others also who did so. Of the four names mentioned by Mr. Velu Pillai, one gentleman, Mr. Paramesvaran Pillai, has just come on to my side and, probably, Mr. Ramakrishna Pillai also, if he had a voice, would support me now. (*Laughter.*)

Sir, I moved the monogamy amendment in this House. I am not mentioning it in a spirit of boasting. Most of the gentlemen from the gallery—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is Mr. Hoogewerf in order in referring to the gallery?

PRESIDENT: No, he is not in order.

MR. A. HOOGEWERF (*Nominated*): Sir, several gentlemen wrote to me to the effect that the rising generation of Travancore are thankful to me for moving the amendment. Several gentlemen here, whose names I do not want to mention,—all leading Nayar gentlemen of Travancore---asked me to press it and congratulated me on the success of my amendment, though I had not even the faintest idea of its being passed. The President of the House him self, when he was passing by congratulated me.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I ask Mr. Hoogewerf if he is sure that the congratulation was not on Mr. Hoogewerf getting what he wanted or on what the Nayar community got?

MR. A. HOOGEWERF (*Nominated*): I was only an instrument for the community in its getting such a blessing.

Excuse me, Sir, if I enter into a little more detail. I asked my wife—

PRESIDENT: All these things are not relevant.

MR. A. HOOGEWERF (*Nominated*): Sir, I am just saying that I asked my wife to ascertain the opinions of a number of Nayar women who came to my house. My wife did so and ascertained their views in the matter.

PRESIDENT: It is not necessary to say all these things here.

MR. A. HOOGEWERF (*Nominated*): It is indirect evidence that Mr. Velu Pillai gave. I heard it myself from all those Nayar women and they raised their hands in thankfulness. *Vox populi, vox Dei.* We are not making laws, Sir, to suit Don Juans who want to have a number of wives. We will be undoing, Sir, as Mr. Subba Aiyar rightly said, what we have already done, and we should not give the

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smallest heed to what the amendment contemplates, which will vitiate the whole of this Regulation.

MR. JOSEPH PANJIKARAN (*Shertallai*): Sir, I oppose the amendment proposed by my friend Mr. P. K. Narayana Pillai. I was also one of those who voted on the monogamy Section, not because I thought that monogamy is a virtue under all circumstances, but because that, under the altered circumstances under which the Nayar community would be after the passing of the present Bill, we all thought that it would be in the interest of that community itself that Nayar husbands should not be given the freedom of taking as many wives as they chose while the wives are deprived of the freedom of divorce which they had formerly. The amendment before us, in my opinion, is only a round-about way of doing away with Section 9 that we have already passed. In support of his amendment my friends Mr. P. K. Narayana Pillai and Mr. T. K. Velu Pillai brought instances from British India and other places. As was rightly pointed out by my friend Mr. Subba Aiyar, there was no reason why they should have gone so far to fetch instances when such marriages could take place even if the man and the woman resided in the same taluk. What the amendment says is that "where the female marries the male without notice of and in ignorance of any prior subsisting marriage of the same male owing to some misrepresentation, fraud or mistake" the marriage shall be valid and the children shall be legitimate. I do not understand what particular significance the introduction of the words "misrepresentation, fraud or mistake" would have on the fact of the marriage. The woman who is married to the male, as was pointed out by Mr. Changanachery Paramesvaran Pillai, cannot get out of the power of such husband, who can sue for restitution of conjugal rights, and in spite of the fact that the marriage was brought into existence through misrepresentation, fraud or mistake, the wife will be forced to submit herself to the man as his wife. These words, it may be argued by my friend Mr. Narayana Pillai, may be taken advantage of by the previous wife. Although, technically, it may be said that she may be able to take advantage of them and try to nullify the marriage that has been thus contracted, I think it is a very slender source of consolation for her, because it would be imposing upon her the duty of proving that the existence of the previous marriage was known to the subsequent wife. I think that, when marriages of such a kind take place, the man and a second wife will be sailing in the same boat and that the first wife in most cases will be a castaway. Under these circumstances, for this woman to go and prove to the satisfaction of a court that the other party had notice of the previous marriage, I think, is almost an impossibility, and the granting of such relief is, in my opinion, no relief whatever. If, on the other hand, my friend Mr. Narayana Pillai would introduce a provision in this clause whereby he might give to the first wife a cheaper way of getting herself divorced from her husband, then I think the amendment might be more acceptable. If it is passed as it is, my objection is this—that the first wife may not have the liberty of getting herself divorced from her first husband, because this is not put down as a condition in the divorce Section

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[President.]

under which the first wife can get herself divorced. If this condition is introduced into the divorce Section as a condition under which divorce can be got, then I can understand my friend. But this condition is not there. So, she will have practically to remain in a position very disagreeable to her out of which there is no way, and the legislature does not provide any way for her. If my Nayar friends think that, in spite of the fact that this House has passed the monogamy Section, it is a thing very hard for the Nayar community to endure, the Nayars may openly move to have that Section cancelled. But, at the same time, it should not work hardship on innocent wives. The position of the first wife also must be duly taken into consideration and sufficient safeguards in her interests should be provided. With the consent of the President, if the House has no objection, Section 9 itself may be cancelled.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Will Mr. Panjikaran himself be able to suggest some suitable modification?

MR. JOSEPH PANJIKARAN (*Shertallai*): If I take some time I shall be able to suggest one.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Sir, I have to oppose the amendment of Mr. P. K. Narayana Pillai as it stands at present. On a cursory reading of it, I thought that the particular object of the amendment was the legitimation of the child born of such wedlock. But, on going through it carefully, I found out that it was not only intended for that purpose but also for the purpose of making the marriage itself valid. Such a round-about way of nullifying a Section that has already been passed by this Council is not at all proper. Moreover, I can emphatically say, in spite of Mr. T. K. Velu Pillai's pontifical assurance to this Council that it is against the wishes of the Nayar community that monogamy was passed by this Council, that it is not against the general opinion of the Nayar community. Of course here and there, there may be a few—

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I ask Mr. Govinda Menon what was the pontifical assurance of mine? I wish to know what that assurance was that I may put him a question.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Mr. T. K. Velu Pillai said that it was against the grain of the Nayar community that monogamy was introduced. It is not so. In fact I have been travelling to and fro since that day something like four or five times from North Travancore to Trivandrum and have known the opinion of various persons.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Sir, I want to know what was the pontifical assurance of mine?

PRESIDENT: He says that you gave the House a pontifical assurance that it was against the grain of the community to accept monogamy.

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MR. A GOVINDA MENON (*Alangad* cum *Parur*): Yes; that was what I said.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Sir, what I said was that it would be against the grain of the Nayar community to accept compulsory monogamy by law, but I never assured the members of the House as a pontiff. (*Laughter.*)

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): It was in a metaphorical sense that I used it. I did not mean anything else. (*Laughter.*) I once more assure the House that, although Mr. Hoogewerf brought the motion, it was not a Christian motion but it was absolutely a Nayar motion. Because, in addition to the fact that Mr. Hoogewerf now disclosed, there are so many people here, adherents of Mr. T. K. Velu Pillai, who also induced Mr. Hoogewerf to bring that motion. As one of the originators of this provision, I fully claim responsibility and I am ready to bear whatever defects there are on my own shoulders. I am fully prepared to bear any blame that anybody may pass on me for bringing about such a state of affairs.

These things apart if Mr. Narayana Pillai's intention is to validate the marriage so far as the child is concerned, that is, to provide for the legitimation of the child, I am prepared to go with him, although, in Mr. Hoogewerf's view, it might not be quite canonical even to give that indulgence. But you must go according to the views of advanced nations in these days, and from what Mr. Narayana Pillai pointed out, it is clearly seen that such provisions exist in other countries where monogamy is the established law. I must therefore oppose the amendment as it is. I am prepared to accept that portion of it which is about the legitimation of the child.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): Will the amendment be split up into two parts?

PRESIDENT: That does not arise now. After the discussion is over, the opinion of the House will have to be ascertained as regards splitting it up into two parts and putting each to the vote of the House separately.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I observe that the issues have been confounded to a considerable extent in the discussion which followed on the motion. (Mr. G. Paramesvaran Pillai: *Hear, hear.*) The question is not about the merits of monogamy or polygamy, but it is entirely a different thing. With respect to the decision of the House on the question of monogamy or polygamy and the enactment of Section 9 already existing in the measure, I bow to the decision of the House. My friend's observation that, because the Chief Secretary voted in favour of the motion, it should be taken that the whole community is prompted by a burning desire for monogamy—



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[Mr. P. K. Narayana Pillai.]

MR. A. HOOGEWERF (*Nominated*): I never said that. I only mentioned him as an instance.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is a proposition which, I am sorry, without further evidence, I am not in a position to accept. Sir, if the Nayar community had been constituted of our estimable friend the Chief Secretary and people of his kidney, there would have been no difficulty. I should be extremely contented, had the community been made up of not Chief Secretaries but at least of Under Secretaries and Assistant Secretaries. (*Laughter.*) The various evils to which the community is now heir to, would not have then arisen at all. But in my experience, Sir, the community, limited as it is, contains a number of poor individuals, ignorant individuals, clumsy and unwashed individuals also, though not numerous, and, in legislating for a community of that description, I thought the tip-top examples of individuals constituting the community though by no means unworthy to be lost sight of are not after all the guiding factors. This motion I am introducing is not in the interests of the better strata of Nayar society, but in the interests of the poor, the ignorant and the helpless. The question was mooted from the stand-point of pure logic. I am prepared to meet it upon that ground. But it is not the angle of vision that should be entertained in a motion of this description. My friend Mr. Subba Aiyar argued the matter as a pure lawyer though he refrained from joining issues upon the statements of law as it obtains elsewhere.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I said I had not read the whole thing as regards the practice obtaining elsewhere.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is what I say. He stated that he was not quite sure what the Validation Acts that I referred to during the opening address in support of my motion meant. May I point out this aspect of the question? It is not a case of regular second marriage in open violation of the law and an attempt to rectify the same that is in issue here. In many countries, the tendency exists for legislatures to be at pains to validate marriages and confer legitimacy on children born of invalid marriages. That was the fact that I was pressing before the attention of the House. My attempt is not to give room to illegitimate children at all. Instead of bringing into existence a number of illegitimate children and then attempting to legalise the marriage, I am just closing the door on illegitimate children being brought into existence by attaching validity to the marriage in question. It is for that purpose that I am moving this particular amendment. So the point with respect to retrorspective operation does not really touch the question.

Then, I pointed out that the absence of marriage registers is a serious handicap and naturally will have to be reckoned with. I was extremely glad to hear the unexpected, though refreshing, news that even in the Christian community there are forged certificates of marriages, etc. I am not glad in the sense that I advocate the forging of

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marriage certificates but only in so far as it is an argument in my favour Such things take place in the Christian communities where marriage registers are preserved with scrupulous care. So far as my community is concerned where not even a straggling register is kept, what will be the enormity of villainously inclined persons? It is only in that view that I say I am glad. So a portion of Mr. Hoogewerf's observation is decidedly in support of this motion. Then came in the alarming consideration as to what the first wife would do. With respect to her, who might have been married to such a person, she may either be a woman belonging to the mitakshara sort of family or to a Malabar Kshatriya family.

MR. JOSEPH PANJIKARAN (*Shertallai*): May not she be a Nayar lady as well?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May be; that is the usual order. I am now considering the exceptions since they loom large in the present discussion. In the case of a Hindu governed by the mitakshara law and a Kshatriya governed by the ordinary marumakkathayam law, there is this fact. The institution of polygamy is not unknown to them. The great pain imagined in the case of such first wife is a matter not of actual existence but of sentimental imagination. With respect to the case of Nayars I may assure the House that the system of polygamy, though rare, is not repugnant. Occasionally it does take place out of sheer necessity or out of mere incontinence. After all, these are of a very rare variety. Therefore, I am suggesting that the pain that is now pictured as being caused to the first wife by the marriage of the husband with another woman is more the result of imagination than of actual experience. That has been the practice of the communities concerned.

MR. JOSEPH PANJIKARAN (*Shertallai*): Must she not be entitled to a free divorce?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Even as it is, that will be good ground for divorce. It comes under incompatibility of temperament provided by the wisdom of Mr. A. G. Menon. (*Laughter.*)

MR. JOSEPH PANJIKARAN (*Shertallai*): Is it nothing more than incompatibility of temperament when the husband betakes himself to another wife?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): If only lawyers are prepared to exercise their ingenuity the grounds are there.

PRESIDENT: Judges must be equally prepared.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is the lawyer who sets the judge in motion; it is the lawyer that supplies the necessary impetus to the judge and makes him lively.

So, I am submitting that in the armoury provided by Mr. A. G Menon we have got the convenient weapon.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know whether Mr. Narayana Pillai as a lawyer thinks that this case will come under incompatibility of temperament?

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[Mr. J. John Nidiry.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Or say desertion. Desertion we have provided for. It may come under the head cruelty. It is an indefinite expression.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Supposing the second wife subsequently becomes aware of the fraud played on her, is it open to her to set aside that marriage?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Certainly.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Can she treat it as void or has she to seek a divorce through formal divorce proceedings in court?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): She has to seek a divorce in court.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Until then she cannot marry?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): How can she?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I refer my friend Mr. Narayana Pillai to Clause 9 itself which declares that such a marriage is void? Therefore there is no necessity to set it aside.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am now concerned with the exception moved.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Then, should it not come under Section 9?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is an exceptional circumstance. It is due to an agreement between the parties. If it is not quite a real marriage, there is the difficulty supervening over the whole question and then I say we should validate such a marriage. If the marriage is the result of undue influence, etc., but originally innocent and brought about really by the invalidating circumstance contemplated in the motion, it must be validated. This is all that I contend for. I am only fighting on behalf of innocents. If, on the ground that this Council has passed a Section on a prior occasion, the amendment is going to be turned down, I am submitting that this Council is not doing justice to innocent people. We have acknowledged our responsibility to legislate for the innocents and I am pressing, Sir,—

MR. JOSEPH PANJIKARAN (*Shertallai*): Who is the innocent party concerned in this?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The second wife who marries the man without knowing the real facts is quite an innocent party.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): Is divorce absolutely necessary in a really void marriage?

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Absolutely no divorce is necessary.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : Are you not imposing a disability on the part of that second wife by validating the marriage by this Proviso?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : She can get herself divorced under the plea of cruelty, desertion or any of those things. In the case of the non-Nayars my friend Mr. Subba Aiyar has been eager to see an exception engrafted at once with respect to existing marriages in favour of their own communities.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Only in particular cases.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Particular cases, no doubt. If a non-Nayar wants to marry a caste wife all this hardship disappears. This Council did not take into consideration any hardship when that exception was brought before this House glibly. This House already sanctioned that amendment, but when it is the case of a Nayar woman who may be victimized by dangerous machinations, this House is bristling with all manner of oppositions and I fail to understand the logical coherence of the views of this Council.

MR. JOSEPH PANJIKARAN (*Shertallai*) : May I know whether Mr. Narayana Pillai is in order when he accuses the Council generally in such terms?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I think I am entitled.

PRESIDENT : I do not think you are, Mr. Narayana Pillai.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Under what particular Section of the Rules, I should like to know, Sir? I think I am perfectly entitled to make a reference—

PRESIDENT : You are referring to the House as a whole.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Not the whole House, but only to those persons who are now starting opposition to the amendment. If I did not say so, I am prepared to modify my remarks.

PRESIDENT : I cannot quote the exact rule just now. But your remarks are hardly complimentary to the House as a whole.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I was referring to the House in relation to what they did on a prior occasion. I am requesting the House to—

PRESIDENT : That is a different matter.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : So, on that basis, my motion should not be twitted with aiming at introducing anything violent in that direction. I am glad my friend Mr. Parameswaran Pillai accepts the necessity for the legitimation of children

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[Mr. P. K. Narayana Pillai.]

and that they should be considered as legitimate. I am glad to that extent. But he says that, because of the absence of a parallel in other legislative enactments, he is unable to accept the amendment.

Let me point out some other aspects of the matter. It is a well-known fact that, if persons want to plead ignorance, mistake, misrepresentation, undue influence, etc., they have to bear the heavy burden of proof before they can succeed. In the case of Nayars who are natives of Travancore, it is not easy to plead absence of notice, fraud, misrepresentation, etc. Only in very exceptional cases as in the case of foreigners would this particular embarrassment arise. It is in view of such rather too exceptional cases that I have moved my amendment. In the ordinary instances, that is, of Travancoreans marrying one another, the difficulty would not arise. The burden of proof will be very heavy upon the party alleging the exceptional grounds.

There is another fact, *viz.*, that the Regulation does not provide for any suit to establish nullity of marriages. Suppose a woman knows that a particular man who marries her has already married. Then there may arise undesirable friction. Where is the possibility of a suit to get a decree declaring nullity ?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : "The Courts shall, subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is barred by any enactment for the time being in force." This is what is provided in the Civil Procedure Code.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : Will divorce proceedings be entertained in civil courts ?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : Suits for declaring marriages invalid are of a civil nature.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I ask of divorce proceedings.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : That is a matter of civil nature and as such the suit will lie.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Even the entertainment of suits ?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : The question has been doubted and so I say—

PRESIDENT : You distinctly provide for civil suits.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : It is a question whether all these proceedings would be suits. They are only proceedings in matrimonial matters. Our High Court is not like the

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supreme courts in British India. It is in view of the limited nature of the jurisdiction possessed by the judicial tribunals here that I say it is quite open to doubt whether any proceedings to nullify a marriage would lie. It is being regulated elsewhere by statutes. In view of that fact, what is the position of a woman who has been unhappily married under a deception? She cannot marry again. Once she is married it is difficult for her to embark again on a marriage under the existing customs and manners of the country. These aspects of the question would have to be taken into consideration.

My motion is a mild one to relieve innocent people from involuntary errors.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Supposing the marriage is itself void?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is the question which I am attempting to solve. It is not void according to me. It is for that purpose—

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Therein lies the complication.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am introducing it for the purpose of counteracting existing provisions under certain circumstances.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I point out that the introduction of this amendment will complicate matters still further?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I request my friend to have some patience. He always thinks that matters are likely to get complicated. If columns of figures are given and if one person is asked to add and subtract he may find some difficulty. But another person who is called on to go through the same process may find no difficulty. It is a question of varying degrees of patience.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Do I understand Mr. P. K. Narayana Pillai to suggest that for all practical purposes fraud shall be deemed to affect the validity of a marriage even though strictly speaking it is bigamy?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes, because of misrepresentation. I may emphasise that notice may be constructive or imputable.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That is a question of fact.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Yes; so it will be a very heavy task borne by the party who pleads for exemption under my proviso. So long as we agree to treat children with favour, I fail to see the logical sequence here.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Supposing she continues and children are born. Will that make any difference?

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[Mr. V. Subba Aiyar.]

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There the children are not responsible. Upon that ground the Scotch law has allowed legitimation. The Scotch law is being laughed at by my friend Mr. Panjikaran. (*Laughter.*)

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*)(*Deputy President*): Why do you go a long distance, as far as Scotland?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Unless I have got a precedent my friend Mr. Subba Aiyar would not agree. So, for quoting a precedent I had to go elsewhere, the distance notwithstanding. So I do not see why my friend Mr. Panjikaran should be so much moved. (*Laughter.*) Where is the possibility of restoring the *status quo ante* for the parties affected in cases where the marriage is brought about by fraud, misrepresentation, etc.? The mischief has been done. In such cases the party who does the mischief according to my friend Mr. Subba Aiyar may escape scot-free. The offender is given a license to misbehave with impunity. That is exactly the position because the marriage would be void. Nothing like inheritance would follow in favour of the wife as she cannot claim anything. She cannot claim maintenance under the Criminal Procedure Code.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): She can file a suit for damages.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): What is the damage, and how is it to be proved? That is no smooth sail. The measure of damages will hardly be a recompense for the injury done.

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know from Mr. P. K. Narayana Pillai what is the penalty that he seeks to impose upon a male who practises such fraud?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There is already the Penal Code in existence.

MR. JOSEPH PANJIKARAN (*Shertallai*): Will it not come to saying that the man may be convicted for bigamy and that at the same time the marriage shall be looked upon as a valid marriage?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): True, for his misbehaviour the man may be punished. Since a distinction has been drawn between wife and children I would request the House to consider my amendment at least as bifurcated.

PRESIDENT: The amendment would need considerable alteration.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have not much to say. I am only reminded by Mr. P. K. Narayana Pillai of the ordinary saying that, when a man has no case, he abuses his opponent. He seems to say: "You have passed certain things in the case of non-Nayars and why not you do it in the case of Nayars also?"

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I do not want to make any distinction between Nayar and non-Nayar. What struck me was the practical difficulty and the amount of complication that we should be lending ourselves to, if we accept the amendment. Therefore, I distinctly stated that the wife may be honestly ignorant, or may feign ignorance. In such cases, where should we draw the line? My friend pleaded for innocents. So far as innocents are concerned, I distinctly asked: "what have you to say about the innocence of the first wife who honestly entered into marriage when her husband was not married at all?" When there is the innocence of two persons namely, the innocence of one who was a party to the marriage when there was no marriage and the other who was a party—whether she was an active party or an indifferent party we are not in a position to know—when there was a marriage, whose position should be protected?

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): May I know from Mr. V. Subba Aiyar whether there is any law in the Madras Presidency or in Malabar which says that a man can have only one wife?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Do not women in those parts enter into matrimonial alliances with persons who admittedly have another wife?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Certainly. If my friend Mr. T. K. Velu Pillai will bring in an amendment to Clause 8 which we have already passed, *i. e.*, for monogamy being repealed, I for one will strongly support it. So, what I say is we must proceed in a logical way. We have accepted monogamy as our goal. We will try to enforce it. Why should you do it by indirect means when you can do it by direct means? By all means, bring in an amendment to the Section. It is idle to say that a subsequent marriage is void as the Section stands at present. What is the use of saying that it shall be void also and then prevent subsequent marriage? When the marriage is void he need not go to any divorce court at all. That being the case, why should we enforce her to subscribe to the revised form of appeal, namely, that she may be treated as proper wife when she may not be willing to do so? If she had known it, she might like to get out of the marriage as early as possible. The whole thing is beset with considerable difficulty. If you do not want monogamy, say by all means that polygamy may be introduced. I am only for it. I do think that we did go wrong, so far as I am concerned. The majority has accepted the clause. That is different.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, is Mr. Subba Aiyar in order in saying that we are all wrong?

PRESIDENT: He said that so far as he was concerned.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That is, that the majority has accepted.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): Is the majority wrong?



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[President.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The decision of the majority is always supposed to be right. That is the presumption.

My own opinion is that it will lead to considerable difficulty, which my friend Mr. P. K. Narayana Pillai does not bargain for. I have not the slightest objection to have it decided by the vote of the members of the community.

PRESIDENT: You want the amendment to be split up into two. I shall first put the first portion which runs as follows to the vote of the House.

*Add the following as sub-clause* (3): "*or affect the validity of any marriage where the female marries the male without notice of and in ignorance of any prior subsisting marriage of the same male owing to misrepresentation, fraud or mistake practised on the said female or her guardians, as the case may be.*"

The amendment was put to the vote and lost.

PRESIDENT: The second part of the amendment runs as follows:—

*Add the following as sub-clause* (c): "*or affect the status and rights of children born to parents where the female enters into marriage with the male without notice of and in ignorance of any prior subsisting marriage of the same male owing to misrepresentation, fraud, or mistake practised on the said female or her guardians, as the case may be.*"

The amendment was put to the vote and carried.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I wish to make a verbal alteration in the amendment that was just carried. Substitute 'enters into marriage with' for the word 'marries'.

PRESIDENT: I take it that the House has no objection to it.

The question is that Clause 44, as supplemented, do form part of the Bill.

Clause 44, as supplemented, was added to the Bill.

***Clause 45.***

PRESIDENT: I see there are identical motions for the deletion of the Clause.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Clause 45 has to be considered after Clause 22.

***Clause 22.***

PRESIDENT: We postponed the consideration of the amendment of Mr. Subba Aiyar to Clause 22 which runs as follows:—

"After the words 'non-Nayar male' in line 1 of the above amendment, insert the following:—

"Contracting a marriage with a Nayar female after the commencement of this Regulation and."

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This was an amendment to Mr. P. K. Narayana Pillai's amendment to Clause 22. Now we will go on with the consideration of Mr. Subba Aiyar's amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, with your permission I submit that we have been able to come to an agreement in respect of Section 22 and therefore I should request my friends Messrs. P. K. Narayana Pillai and Subba Aiyar to withdraw their amendments so that I may move the agreed amendment.

PRESIDENT: If Mr. P. K. Narayana Pillai withdraws his amendment, Mr. Subba Aiyar's amendment falls.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In view of the request made by my friend Mr. Paramesvaran Pillai and in view of the peculiar circumstances to which we have been reduced in the matter of enacting this Bill, I am obliged to accept the request that the mover of the Bill has made at present. So I request the members of this House to permit me to withdraw my amendment and also to give permission to Mr. Subba Aiyar to withdraw his amendment.

The amendment was, by leave, withdrawn.

PRESIDENT: Mr. Subba Ayar's amendment being an amendment to Mr. Narayana Pillai's amendment, it automatically falls.

Then we come back to Clause 22 as it was settled by the Select Committee.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, in regard to Clause 22, I beg permission to move that Section 22 be deleted and the following substituted in its place:—

*22. (1) On the death of a non-Nayar male marrying a Nayar female after the commencement of this Regulation and leaving him surviving by such marriage a widow or children or the lineal descendants of deceased children or all, they shall, if the deceased has also left heirs according to the law by which he is governed, be entitled, after deducting the reasonable expenses of his funeral, to one-half of the self-acquired and separate property left undisposed of by him at his death, and, in the absence of heirs according to the law by which he is governed, such widow or children or the lineal descendants of deceased children or all shall be entitled to the whole of such property.*

*(2) On the death of a non-Nayar male whose marriage with a Nayar female is subsisting on the date of the commencement of this Regulation leaving him surviving by such marriage a widow or children or the lineal descendants of deceased children or all, they shall, if the deceased has also left heirs according to the law by which he is governed, after deducting the reasonable expenses of his funeral, be entitled to one-fourth of the self-acquired and separate property left undisposed of by him at his death, and in the absence of heirs according to the law by which he is governed, such widow or children or the lineal descendants of deceased children or all, shall be entitled to the whole of such property.*

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[MR. K. Paramesvaran Pillai.]

(3) *Nothing in this Section shall confer any rights on a party to or the offspring of a marriage dissolved before the commencement of this Regulation.*

Now let me first explain to the House the provisions contained in the amendment. Section 22 as it stands runs as follows :—

On the death of a non-Nayar male leaving him surviving a Nayar widow or children or the lineal descendants of deceased children or all, they shall, if the deceased has undivided heirs according to the law by which he is governed, be entitled to one-half of the self-acquired and separate property left undisposed of by him at his death, and if there are no such undivided heirs, such widow or children or the lineal descendants of deceased children or all shall be entitled to the whole of such property.

So, if a non-Nayar dies, he leaves behind him two sets of heirs, namely, his Nayar widow and children and also the undivided heirs according to the law by which he is governed. As the Section stands at present, the Nayar widow and children will be entitled to the whole of his property if he does not leave undivided heirs according to the law by which he is governed. Now that we have omitted the word 'undivided', the result would be to reduce the share of the Nayar widow and children to one-half even when he dies leaving him surviving only his divided heirs according to the law by which he is governed and their right to the whole of such property would arise only in the absence of all the heirs whether divided or undivided.

The second amendment that we have made to the Section is to make a reasonable provision for the expenses for the funeral of the deceased person. The third change made in the Bill is in regard to the marriages subsisting on the date of the commencement of this Regulation. There, we make a distinction between marriages subsisting on the date of the Regulation and contracted subsequent to the passing of the Regulation. In the case of marriages subsisting on the date of the commencement of this Regulation, it is provided that the share of the Nayar widow and children shall be one-fourth only.

These are the main changes made in the Section and I am asking the leave of the Council to move the Section as amended.

MR. C. SANKARA MENON (*Quilon*) : May I know from Mr. Paramesvaran Pillai whether he proposes to make any amendment to Section 20 as regards the inheritance of the property of the Nayar wife. The husband is allowed to inherit the property of the wife. I wish to know whether it is confined only to Nayar husbands or non-Nayar husbands also.

PRESIDENT : We are not discussing Clause 20 now.

MR. C. SANKARA MENON (*Quilon*) : I am asking whether—

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*) : The amendment that I submit was the result of the compromise we arrived at yesterday. Mr. Sankara Menon himself was also present yesterday and if he had drawn attention to this matter, we might have come to a conclusion as to whether any amendment is necessary. Anyhow, I shall be

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glad to accept any amendment which he brings, if it is found to be necessary.

Now, Sir, in moving my amendment, in view of what my learned friend Mr. P. K. Narayana Pillai has said, I feel bound to say a few words to support the changes that have been made. From his speech, I am inclined to think that the mover of this Bill takes the entire responsibility for asking the leave of the Council to delete the Section and substitute it by the Section which I now moved. Even if the whole responsibility is upon me, I shall not hesitate to accept it. Now, Sir, so far as the amending Section is concerned, there are concessions on both sides. The Nayar members of this House have conceded two things. In the first place, they have conceded that, in the case of marriages subsisting on the date of the Regulation, the share of the Nayar widow and children shall be only one-fourth instead of one-half. They have also made a concession to the effect that, in calculating the share, the reasonable funeral expenses of the deceased person shall be excluded. I may say that my non-Nayar friends have also made valuable concession inasmuch as they conceded the principle of the right of inheritance to the Nayar wife and children to share in the self-acquired properties of the deceased husband or the father as the case may be. They have also conceded further that this principle may be extended in the case of marriages subsisting on the date of the commencement of this Regulation. This latter point, Sir, you know, was the subject of a very great and heated controversy in this House at the time when Mr. Subba Aiyar's amendment was being discussed. Now, in regard to the principle of the concession made by the non-Nayars, namely, that the law of inheritance might be extended to marriages subsisting on the date of the Nayar Regulation, I may say that we accept it not because we find that we have got a weak case, but because we are arriving at a compromise. I am not at all convinced by the arguments of my friend Mr. Subba Aiyar on the question of the exemption of the existing marriages. He had been speaking about vested rights, retrospective effect and all manner of things. As Mr. P. K. Narayana Pillai pointed out, he did not mean "vested rights" in its technical or legal sense, but in some other sense. What exactly that sense is, it is not possible to know. Probably, he meant it in a Pickwickian sense, but that is not the sense in which we expect the Law Member to use legal expressions in dealing with a legislative enactment. The expression "vested rights" is well known in law and it has been defined in Black's Law Dictionary.

Mr. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Is it necessary, Sir, to go into the merits of the controversy now? May I be allowed the right of replying upon the whole amendment so as to show how absurd the arguments of the other side are and to expose the fallacies of the arguments of the members who spoke on the other side? I thought that the matter was taken as concluded and there was no necessity for any disquisition on the subject and if only the President will allow me to speak on the original amendment, I will expose the fallacies of the arguments on the other side which may take some time.

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[Rao Bahadur K. A. Krishna Aiyangar.]

PRESIDENT: No special permission of the President is necessary, because Mr. K. Parameswaran Pillai is moving the amendment and it requires to be seconded and discussed.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Well, Sir, I do not want to prolong the discussion any longer, as it has been pointed out that it may lead to further discussion. All that I wanted to say was that in this matter I am quite prepared to support the proposition that it is quite legal, proper, equitable and just to extend the provision in regard to inheritance to existing marriages, in spite of the arguments to the contrary put forward on the other side. Therefore, my non-Nayar friends of this House need not at all be sorry that they made this concession. On the other side, in regard to my Nayar friends, I may say that they have got just claim in regard to inheritance in cases of marriages with non-Nayar males. Still it appears to me that harmony, good feeling and friendliness between the two communities are very important, and if our object could be achieved without sacrificing those things, it would be all the better. There is in this amicable settlement, I think, matter for congratulation on both sides. The Nayars might congratulate themselves that, though in an attenuated form, we have gained a great principle. The non-Nayars might congratulate themselves on the fact that a great concession has been made from this side in regard to the share of inheritance in respect of existing marriages. Both the communities might congratulate themselves on the atmosphere of good feeling, fellowship and friendliness created by this amicable settlement which we have been able to arrive at by the united labours of some of us, especially my friends Mr. Krishna Aiyangar and Mr. Subba Aiyar. To me personally, Sir, it has been a matter for great gratification. I feel I have been able to gain a principle for which I have been fighting bitterly for the last twenty years, and I believe that it will do good not only to the Nayar community but also to the non-Nayar communities who have marital relations with Nayars, and the enactment of a provision of this kind will redound to the lasting glory of this House. With these few words I move this amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Sir, I have very great pleasure in seconding the amendment proposed by my friend Mr. K. Parameswaran Pillai. As he pointed out, the amendment represents the greatest common measure of agreement arrived at between two contending schools of thought, one claiming a right of succession even as regards the existing marriages, and the other stoutly denying that right. Both the parties seem to have taken their stand on first principles, and a good deal of discussion went on. I felt then, Sir, though I opposed the amendment brought forward by my friend,—I felt, when we came to the end of the discussion, that there was a good deal to be said on both sides. I am not prepared to say that there was wisdom or justice only on the side of one of the parties. I thought there was much that could be said in support of each position, and that any decision reached by the Council as the result of voting would not be quite

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so satisfactory as the result of a free discussion and settlement reached as the result of that discussion. I may say, Sir, that when my friend Mr. K. Paramesvaran Pillai first began the topic, both of us realised that, in the best interests of both the communities, any decision arrived at by a compromise was bound to be very much more satisfactory than a decision arrived at by keeping the discussion in the House itself. For, in a private negotiation, myself and my friend Mr. K. Paramesvaran Pillai may be prepared to make very large concessions, which, as a matter of principle, if we fight it in a court, we may not be prepared to recognise. There is no use in re-examining at any length at all the soundness or otherwise of the position taken up by the respective combatants in this controversy. I shall, therefore, resist the temptation to follow my friend Mr. Paramesvaran Pillai in trying to point out that 'though we conceded we were right'. After all, that does not improve the position. I take it that, when he made those observations, it was not his idea to disturb the cordiality and harmony which was arrived at by that understanding. I thought that, as a responsible representative of that community, he felt he owed a duty to a very large section of the Nayar community to explain to them in some detail the various reasons which weighed with him and his friends in this House in coming to that understanding. Beyond that, I decline to believe that he ever seriously intended to disturb the good feeling and fellowship which certainly he was quite as earnest in securing as other friends who worked with him in that direction. So I submit: "Let the controversy die out. Let us not have any echo of the bitterness which unconsciously, in spite of ourselves, without really meaning to insult the opinion of others—which, in spite of ourselves, occasionally comes in in the heat of the controversy." No useful purpose will be served in re-examining the merits of the respective contentions, especially when both of us have reached an understanding and when both of us feel that, under the circumstances, it is a fair and equitable settlement. Even with respect to the parties who think that they have made a certain amount of concession, it is not a matter on which they have to feel any regret at all. Harmony, good fellowship, and the final determination of controversy are seldom achieved, whether in this Hall or outside the Hall in the real field of life, without each party making some sacrifice, and the particular matter, I mean the aspect, in which I think those who took part in it may congratulate themselves, is that they were able to come to an understanding without considerable sacrifice or without increasing any misunderstanding or bitterness. So, as I submitted, it represents the greatest common measure of agreement beteween two schools of thought, and both the schools might well assure themselves and assure others that, under the circumstances in which we find ourselves, it is a a fair settlement of a controversy, which the House may accept. I may certainly, Sir, in common fairness, return the compliments which Mr. Paramesvaran Pillai paid me for the part that I played. I felt he might with advantage have omitted all references to it, but in view of his having made that reference, I think I do owe a duty to my friends Mr. Paramesvaran Pillai and others who heartily co-operated with me in trying to reach

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[Mr. L. R. Raja Raja Varma Koiltampuran.]

what would commend itself to all as a fair solution of the controversy. I may say what struck me and what encouraged me at the outset was the spirit in which every one was anxious to get at a fair settlement. With these few words, Sir, I commend the motion for the acceptance of the House.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): Sir, I raise the most emphatic protest against the amendment. I am only sorry that at least one section of the non-Nayars did not want any such concession as this. We stood on a certain principle, and if we are to lose that, we do not want this concession at all. Sir, on the last occasion when I spoke on Mr. M. Raja Raja Varma's amendment, I stood on certain principles. I have drawn the attention of the House to the fact that I do not approve of any difference being made between the Nayar husband and the non-Nayar husband in case of future marriages and that some relief at least ought to be afforded to the non-Nayars in the case of existing marriages. My contention was that the Nayar Bill might justly devise a certain system of devolution regarding the husbands of Nayar ladies—whoever they be, Nayar, Brahmin, or Kshatriya—and since I take it that due notice is given only now, by this Regulation, parties to marriages that subsist on the date of this Regulation should not be taken by surprise, should not be compelled to accede to this Section, but may be allowed to contract outside the provisions of this Section. While I pleaded for a relief for this class of non-Nayar husbands, the necessity for the protection of their Nayar wives and children too was not lost sight of. I only emphasised the question—is it just to treat those non-Nayars who have already entered into marital relations with Nayar ladies, under the existing law, custom and practice, on an equal footing with those who come up voluntarily, knowing full well all the entailments they have to be encumbered with under the new law? What I meant was that some sort of relief of the type provided under Clause 45 in the present Amendment Bill with a proviso for a sufficiently decent maintenance or pure liberty of contract, as I have devised in my amendment, may be allowed to them. You will note I have devised a clause as lenient and as liberal as possible in the matter and purposely so even when I had before me Mr. Subba Aiyar's amendment. One may remark it as feeble in itself and that it serves nothing more than that provided by the right of will or even less. To my mind it was only a question of sentiment, if I rightly understood it; for nobody could give a more potent weapon into the hands of the husband than the right of absolute will. Whatever you add under Section 22, it can defeat the very purpose of this chapter; whether for a Nayar or for a non-Nayar it becomes as bad as he is bad. Under the circumstances, I find the whole question is one of pure sentiment. But, when once the strict right of inheritance is to be accepted by the House even in cases of marriages performed before this Regulation, I see no reason why it should grudgingly be reduced to one-fourth for existing marriages. I for my own honor and for the honor of a constituency enjoying some of the highest aristocratic privileges in the

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land, cannot demean myself to endorse such a base measure of bartering terms and arriving at the lowest pecuniary bid, in the provision for one's own wife and children. Rather, I would extend the entire benefit of inheritance to the Nayars and accept them on an equal footing with the other heirs in both cases. The members of my constituency do not grudge like this in providing for the comforts of their own wife and children. The honor of my constituency demands that I should not stoop to such a base measure. If some non-Nayars can welcome it let them do so. I for my part cannot willingly consent to it. I am led to believe that this is a sort of compromise arrived at by some of the leading Nayars and non-Nayars on this vital question. On no account do I want to impede the progress of the Bill and I wish to see it passed in this sitting.

MR. M. UDAYA VARMA RAJA (*Co-opted*): May I know whether he speaks on behalf of his constituency in this matter?

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): Certainly.

MR. M. UDAYA VARMA RAJA (*Co-opted*): Has he taken the pains to consult the members of his constituency?

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): Yes. I have consulted several members of my constituency who are at Trivandrum. I knew of the amendment only yesterday.

If the other members of my constituency in this House also do approve of this amendment in spite of its meanness, I shall at best sit silent and neutral and regretfully weep for the dishonourable step my elders have assumed in the matter against their own contentions, against their own intentions and against their own practice.

PRESIDENT: You are out of order in attacking members of this House.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): I am sorry for it, but I shall withdraw my statement.

MR. A. HOOGEWERF (*Nominated*): I am exceedingly glad to see Mr. L. R. Raja Raja Varma taking such a high stand in this matter. I am not opposing Mr. K. Paramesvaran Pillai's compromise amendment. But on the other hand I hail with delight anything that removes bad blood and makes for peace. All the same, a compromise which perpetuates or gives the *imprimatur* to a stigma on the Nayar wife and children cannot be a compromise. We have been trying to wipe off that stigma. Mr. Raja Raja Varma stands on a high plane. The compromise is not in keeping with what we have already done. I thought everybody here would quietly accept the amendment without raising a word of protest to the peaceful speeches made both by Mr. Paramesvaran Pillai and Mr. Krishna Aiyangar. What Mr. Raja Raja Varma has said is very true and very welcome to a person like me at least, who has stood for the rights of the Nayar wife and children. I do not oppose the amendment. All the same, I congratulate Mr. Raja Raja Varma on the high stand that he has taken in this matter.



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[Mr. P. K. Narayana Pillai.]

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Sir, I merely say a word in order to prevent further debate. The compromise that is now before the House in the form of an amendment is, I may say, the clarified essence of much wisdom and forethought of a very high and patriotic order. The term 'concession' could have been omitted in the speeches of my friends, because concession means that one in some position of superiority gives something to another, so that when the word right is used by Mr. Paramesvaran Pillai the term 'concession' has no place. There has been some little difference between Mr. Paramesvaran Pillai and Mr. Krishna Aiyangar—one making some positive assertions, and the other negative, like positive and negative electricity. But the currents have now united. As it has been said, the leanest compromise is better than the fattest success. We need not go and discover the various stages and the various arguments advanced in regard to the motion tabled by both sides in order to arrive at a compromise of this description. Both my friends are lawyers, and they know it better than almost anybody else in this House, that when once the compromise petition is presented, no protest of any kind should be made. I can very well understand the feeling of Mr. L. R. Raja Raja Varma who stood up in defence of a principle which he considers sacred. But whatever be the principle let us not forget the practical difficulties of the situation. It is certainly creditable to those who took part in the discussion which resulted in the compromise, that they tried to see each other's point of view and understood each other so well, that I am sure, there will be amity between them for all time. I do not think I should say anything more, but I would thank those gentlemen, Mr. K. Paramesvaran Pillai and Mr. Krishna Aiyangar, particularly. All of us in our own measure have taken part in the discussion, but that is a different question. I would particularly thank these two gentlemen for bringing about the compromise in the form of an amendment. Mr. Paramesvaran Pillai could certainly afford to say that he has got some gratification, for, during the last 20 years he was trying to establish this principle. There is a large number of persons who have been working for the same principle. I would congratulate all of them, and I trust the House will accept the compromise which is the very best under the circumstances.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I also rise to thank all those gentlemen who have been good enough to bring about a compromise on a pretty vexed question. On a prior occasion during the discussion of the Nayar Regulation Amendment Bill, I observed that I still entertained high hopes about my friend Mr. L. R. Raja Raja Varma, and those gentlemen who are present to-day in the House, I am sure, will be ready to bear testimony to the noble idea that was found underlying the indignant protest that he made in the House. Sir, in view of the existence of members of the sort of Mr. L. R. Raja Raja Varma in the non-Nayar communities with which the Nayar community has marital relations, the leanest compromise, one should consider, ought to be sufficient to meet the requirements of the

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situation. Mr. L. R. Raja Raja Varma evidently forgot that there is nothing like unanimity among members constituting a community. There are different currents of opinion, and a compromise, he could understand, was arrived at as an adjustment of the different currents and cross-currents of opinions, leanings and prejudices; and as such he should not proceed to envisage the compromise in question from the lofty pinnacle of noble sentiments to which he has given vent just now. In view of that he should regard this compromise only as an attempt to satisfy all interests concerned and not as a step towards the realisation of high ideals. There is only another party—

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): I never wanted to open the question for discussion.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am not discussing the question. My faith was shaken here and there a little by the views expressed occasionally by Mr. Raja Raja Varma on the Bill. When I was listening to the mettlesome utterance of our young friend, the impression I have formed of him and given expression to by me revived in my recollection and proved a source of pleasure to me, though I am not concerned with the somewhat indignant strain of his speech but only with the nobility of thought with which it was suffused. Then there is only another party I have to thank in this connection, and that is none other than the Government of Travancore. But for the very deep interest the Government of Travancore took in the discussion of this measure, I fear—

PRESIDENT: We have not come to the end of the discussion.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I fear we could not have probably come to the end of this Bill in this fashion, but for the deep interest that they have evinced in a measure of such importance so far as the Nayar community and some non-Nayar communities are concerned.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Under very exceptional and extraordinarily difficult circumstances, Mr. Parameswaran Pillai, the mover of the Bill, has been obliged to effect a *rapprochement* between the non-Nayars and the Nayars in regard to this vexed question, and in so far as the *rapprochement* goes, he has to congratulate himself and so have we all to congratulate ourselves. But I am not so sure that the *rapprochement* thus effected will be aclaimed with satisfaction outside this House. Not that I am in any way opposed to any step which will tend to promote harmony and good feeling between the Nayar and non-Nayar communities. The merits of the compromise were hinted at during the discussion here. But it is better that we do not, at this stage, consider and discuss the merits of the compromise and that they are judged by the community later on. I take it that the compromise does not represent the final word on the subject. As a matter of fact, I view the compromise with satisfaction only on account of the fact that we have advanced one step further than where we would have been but for this compromise.

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[Mr. V. Subba Aiyar.]

MR. TRIVIKRAMAR VASUDEVAR (*Jenmies*): നായർ ബില്ലിൽ അനായന്മാരെ സംബന്ധിച്ചിടത്തോളം വളരെ പ്രാധാന്യം വഹിക്കുന്ന ഒരു വകുപ്പാണ് ൨൨ാംവകുപ്പു. അതിനെ സംബന്ധിച്ച ഇന്നവിധത്തിലെല്ലാമാണ് ഞങ്ങളുടെ അഭിപ്രായമെന്നു രേഖപ്പെടുത്തീട്ടുള്ള അനേകം ഹർജികൾ ഇപ്പോൾ തന്നെ ഞങ്ങളുടെ കൈവശമുണ്ട്. അത് എന്റെ സമുദായക്കാർ എനിക്കും, ഗവർണ്മെൻറിനും, മറ്റു കൌൺസിൽ മെംബർമാക്കും അയച്ചിട്ടുള്ളതിന്റെ പ്രതികളാണ്. അവരുടെ എല്ലാവരുടേയും അഭിപ്രായം ൦൨൦ ൨൨ാംവകുപ്പിനു വിപരീതമാണ്. അതൊരിക്കലും നടപ്പാക്കാൻ പാടില്ല, മുമ്പു നടപ്പില്ലാത്തതാണ്, എന്നൊക്കെ പല കാരണങ്ങളും പറയുന്നുണ്ട്. ഇങ്ങനെ പുതുതായ ഒരവകാശം സൃഷ്ടിക്കുന്നത് ഒരു സമുദായത്തെ മാത്രം സംബന്ധിച്ചായാൽ വേണ്ടില്ല. അത് അനായന്മാരായ പലസമുദായങ്ങളേയും ബാധിക്കുന്നതാണ്. അവരുടെ സമുദായത്തെ ബാധിക്കുന്നതിനെപ്പറ്റി അവർ വളരെ മനസ്താപപ്പെടുന്നുണ്ട്. ഇന്നലെവരെ ൦൨൦ വകുപ്പിൽ ഹാജരാക്കീട്ടുള്ള ഭേദഗതികളുടേയും ഇവിടെ സംസാരിച്ചതിന്റേയും ഏകദേശമുള്ള തർജ്ജമ എനിക്കു കിട്ടീട്ടുള്ളതു കൊണ്ടു നല്ലവണ്ണം മനസ്സിലാക്കാൻ കഴിഞ്ഞു; ഇപ്പോൾ ഹാജരാക്കീട്ടുള്ള ഭേദഗതികളുടെ വകുപ്പ് ഇവിടെ വന്നതിൽ പിന്നീടാണ്, എനിക്കു കിട്ടിയതു്. അതു ഇംഗ്ലീഷിലായതു കൊണ്ട് അതിന്റെ താൽപര്യം നല്ലവണ്ണം മനസ്സിലാക്കാൻ കഴിഞ്ഞില്ല. സംസാരിച്ചതു കൊണ്ടും മനസ്സിലാക്കാൻ കഴിഞ്ഞില്ല. ഇപ്പോൾ അതിൽ കുറച്ചു വ്യവസ്ഥകൾ ചെയ്തിട്ടുണ്ട്. കീഴ്കഴിഞ്ഞിട്ടുള്ള വിവാഹങ്ങൾക്കു നാലിൽ ഒരംശവും മേൽവരുന്ന വിവാഹങ്ങൾക്ക് ഒന്നു പകുതിയും രേഖപ്പെടുത്തീട്ടുണ്ടെന്നാണ് ഞാൻ മനസ്സിലാക്കിയതു്.

ഇപ്പോൾ തൽക്കാലം വഴക്കുകൂടാതെ കഴിക്കാൻ എളുപ്പമുണ്ടെങ്കിലും എന്റെ സമുദായക്കാരുടെ അഭിപ്രായം എന്നെ അറിയിച്ചിടത്തോളവും ഞാൻ ചെയ്യേണ്ട കടമയും എനിക്കു പ്രത്യേകം ചെയ്യാതെ തരമില്ല. അതുകൊണ്ട് ഇപ്പോൾ കൊണ്ടു വന്നിട്ടുള്ള ഭേദഗതിയോടു എനിക്കു ചേരാൻ നിവൃത്തിയില്ല എന്ന് അറിയിച്ചു കൊള്ളുന്നു.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I do not quite appreciate the remarks of Mr. Narayana Pillai or some of the observations of Mr. Parameswaran Pillai with reference to the respective merits of the position taken up by the various parties concerned. I only wanted to stick to a principle irrespective of the question

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whether a person is a Nayar or a non-Nayar. If any particular measure is made to apply to existing contracts, there should be a majority of opinion in favour of it so far as a particular community at least is concerned. Therefore in the case of Nayars it was all right. In the case of Nayars the majority was for it. Therefore, in order that such a piece of legislation might not be given retro-active effect I moved the amendment against Mr. Narayana Pillai's amendment. Of course there is some dispute as to whether the effect of the proposed Bill is to give a retrospective effect or not. With all deference to those members who take the opposite view, I maintain that it *does* give retrospective effect. But what struck us most was that the communities that are affected by this piece of legislation are influential communities who have been getting on harmoniously and amicably for centuries together. That harmony is likely to be jeopardised by the proposed measure one way or the other, and it is therefore that some of the representatives thought that it would be better to make up the difference. Whenever there is a question of compromise, it is always a question of giving in by both sides. Strictly speaking, it may be against the principle contended for by one side or against that contended for by the other side, because a compromise will not generally represent the contentions of either party. But it should not be thought that anybody has given up any principle. It was the consideration that the cordial and friendly relations that existed for a very long time should continue even after the present Bill is passed, that induced many of us to see that, even though at the sacrifice of some principle, a measure be passed, it will satisfy or at least bring friendly relations between all the parties concerned. It was that which induced us to bring forward this amendment, and nothing else. Evidently my friend Mr. L. R. Raja Raja Varma is new to questions of compromise and always stands upon principle. Perhaps if he lives and grows older as many of us, unfortunately, have grown, he will realise that there is not always a course of straight road. If you follow a straight road you are sure to be hit by somebody who comes against you so that you will have necessarily to give way to one who comes directly against you in order that you may not be hurt. Such a spirit is conducive to the good relations, the capacity, the ability and the intelligence of the members of this House. Therefore I take it that we ought to welcome a compromise, not viewing it as to how far it removes the original defects, but as to how far the result achieved will conduce to the happiness of the communities concerned. That is the only thing we are concerned with. We ought to be judged by what we have done now. I beg to thank Mr. Parameswaran Pillai and those who were anxious to have the matter passed in this way. It is only on account of that, I can assure my friend, that I yielded, not because I did not recognise the principle that retro-active effect should not be given to this legislation. That is all I have to say and I am certainly for the amendment.

MR. S. SUBRAHMANYA KARAYALAR (*Pattanapuram* cum *Shencottah*): The compromise that has been effected is neither a legal compromise nor an equitable one. It is in my opinion a business

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[Mr. C. Sankara Menon.]

compromise for the existing relation of a Nayar lady with a non-Nayar. It can very well be compared to a case where a thing is sold and bought, when neither the seller realises the price nor the buyer saves anything. Now the seller cannot come forward and say, nor has the buyer any likelihood of coming and saying.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): May I know whether business is not carried on through brokers?

MR. S. SUBRAHMANYA KARAYALAR (*Pattanapuram* cum *Shencottah*): Sometimes. Here in the case of existing relationship—

MR. C. SANKARA MENON (*Quilon*): Is that the way in which Mr. Karayalar is viewing the marriage problem? Would he give away his daughter similarly?

MR. S. SUBRAHMANYA KARAYALAR (*Pattanapuram* cum *Shencottah*): I view it in that light so far as the existing relationship is concerned. In the existing relationship a Nayar female cannot expect that advantage which she would have in future.

PRESIDENT: We have decided not to discuss the merits of the compromise. But you are discussing the merits of the compromise.

MR. S. SUBRAHMANYA KARAYALAR (*Pattanapuram* cum *Shencottah*): Therefore it is that I say that a proper compromise cannot be objected to. (*Laughter.*) I strongly support the amendment. (*Laughter.*)

MR. C. SANKARA MENON (*Quilon*): In view of what has been stated by my friends Mr. Changanachery Parameswaran Pillai and Mr. Krishna Aiyangar I do not propose to oppose the compromise. But I regret I cannot allow this amendment to pass without a word of protest from me. I cannot see eye to eye with those who were responsible for this compromise. Mr. Narayana Pillai's amendment and Mr. Subba Aiyar's amendment were both discussed at very great length and it was clear from the discussion what exactly was the difference. The difference was not so much the desire on the part of the Nayars to get some property or money from the non-Nayar husbands, but it was the recognition of a right that was contended for. Mr. Subba Aiyar's amendment affected the self-respect and the honor of our community. When the formalities of the marriage are all the same, the legal incidence resulting from such an alliance must also be the same.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): May I ask Mr. Sankara Menon whether the formalities are all the same in both systems of marriage?

MR. C. SANKARA MENON (*Quilon*): When a non-Nayar marries a Nayar female or a Nayar marries a Nayar girl, the form is the same. The marriage prescribed is one and the same. Therefore the legal incidence resulting from such marriage also must be the same. It is for that principle that we have been fighting. If the Nayar community values anything, it is their self-respect and their honour, and not

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money. Therefore, it is on that ground that I do not like this compromise. Honour and self-respect ought not to be the objects of barter. And therefore this compromise is one which I do not think our community can accept with much gratification. However, in view of the fact that both Mr. Parameswaran Pillai and Mr. Krishna Aiyangar are for the amendment, I do not propose to oppose it.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Sir, I also wish to make a few observations on this important occasion. The compromise has been welcomed by many of the members from this side of the House as well as from the other side. I am very glad that such a compromise has been effected. Of course the Nayar members were fighting for the rights of the Nayar wife and children. The non-Nayar members were fighting for the rights of the non-Nayar husband. But my submission is that the chief parties concerned are the non-Nayar husband, and the Nayar wife and children. It is their happiness that should be our chief concern. Suppose the Nayar wife and children succeed and the non- Nayar husband is defeated; I think there will not be happiness and harmony between them. On the other hand, suppose the non-Nayar husband succeeds and the Nayar wife and children are defeated; then equally miserable would be the state of their home. So a harmonious settlement of the affair is what we all wish for. I am very glad that such a thing has been achieved by the endeavours of my honourable friends who have done so much for this noble cause, and I congratulate them and also the House for their grand achievement in this matter.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, it appears to me that I was counting without some of my hosts in moving this amendment. I never expected there would be any opposition to this amendment. The opposition came from two members representing two extreme sections. My friend on the left side also opposed the amendment and protested against it in the most emphatic terms on the ground that his community was not able to concede the whole of our claim. On the other hand my friend Mr. Trivikramar Vasudevar objected to it on the ground that his community was not willing to concede an inch. Setting off one extreme against the other, we arrive at a compromise, which is my amendment. So I take it that my amendment has been accepted by the whole House.

In regard to the honour and self-respect referred to by my friend Mr. Sankara Menon, I may say that I am no less jealous of the honour, reputation and self-respect of my community than any other member of this House,—not even Mr. Sankara Menon. If I thought that in the slightest manner, to the slightest degree, the self-respect or the honour of my community would be affected by this compromise, I should have been the very last person to accept it. On the other hand I think that, by accepting the compromise, so far as self-respect and honour are concerned, both have been saved sufficiently in as much as the great principle for which we stood and which affected our honour and self-respect has been maintained by this amendment.

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[Mr. C. P. Kochukunju Pillai.]

Sir, I endeavoured in the beginning of my speech to say a few words with regard to the controversy itself, not because I thought it necessary to rouse up the controversy again, but because I thought that there was a lingering thought at the back of the minds of some of my friends to lay the whole responsibility for this compromise upon my shoulders. I thought that, in justice to the community and also in justice to the non-Brahmin communities, I should justify the compromise. I think by their acceptance I have done so. Once again let me say that I am glad that by this compromise what bitterness of feeling was created by the controversy has been removed and harmony and fellowship restored between communities which have been having marital relations and living in amity and good will for all time since Kerala came into existence. With these few words, I press the amendment.

The motion was accepted by the House.

The question that Clause 22, as amended, do form part of the Bill was put and carried.

The Clause was added to the Bill.

The Council adjourned for lunch at 2-18 P. M. and re-assembled after lunch at 3-10 P. M.

***Clause 23.***

PRESIDENT: We will proceed to Clause 23. Mr. C. P. Kochukunju Pillai's amendment has not been disposed of.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): Sir, I beg your permission to move my amendment in a modified form.

PRESIDENT: What is the modification?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): It is this, Sir. Add the following as sub-clause 3 to Section 23:—

"*In the case of marriages subsisting on the date of the commencement of Regulation I of 1088, property acquired by gift or bequest by the wife or children from the husband or father, as the case may be, before Regulation I of 1088 came into force, shall, unless a contrary intention is expressed in the bequest or gift, if any, belong to the wife or widow and each of the children in equal shares.*"

The object of my amendment is this. Clause 23, sub-clause 1, provides for partition of properties acquired by the wife and children from the husband or father after Regulation I of 1088 came into force. Suppose a husband and wife are alive on the date on which Regulation I of 1088 came into force and the marriage between them was subsisting on that date. The father might have gifted properties to his wife and children just before the date of that Regulation and also after the date of that

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Regulation. According to Section 42 of this Regulation, properties so acquired before the date of that Regulation are not made partible. Now the same father has gifted properties to his wife and children just before the date of that Regulation and also after that Regulation. According to the Regulation two kinds of devolution of properties are allowed, one set composed of properties gifted to his wife and children by the father just before the Regulation comes into force and another set after the Regulation comes into force. I believe that is not fair. Properties gifted by the father, though on two occasions, have to be allowed only one kind of devolution. Hence my submission is that, as the amendment goes, such properties also must be allowed to be divided among the wife and children as is provided for in sub-clause 1. Hence I move the amendment.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I second that amendment. Thereby we shall be only giving effect to the intention of the legislature when it passed Regulation I of 1088. Section 26 of that Regulation says that nothing contained in that Regulation shall affect or confer any rights to parties of marriages dissolved before the Regulation came into force. The Marumakkathayam Committee's Report also says that Section 26 was introduced in order to see that only in the case of existing marriages should the benefits of partition in the case of makkathayam property operate. The Full Bench decision to which reference was made yesterday went a step farther than the intention of the legislature by treating the properties obtained by the wife and children from the husband or father before Regulation I of 1088 came into force and also after Regulation I of 1088 came into force. Although the marriage might not have been subsisting on that date I should consider that it will be only proper that when the same father gives properties to his wife and children all the incidents which attach to one set of properties gifted before Regulation I of 1088 came into force should also apply to the other set of properties gifted after Regulation I of 1088 came into force. It is rather incompatible. Otherwise the position is rendered anomalous.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In spite of the many difficulties pointed out by the mover of the amendment, I fear, the amendment deserves to be opposed. First of all, we have Section 42 of the present Bill which is definite and clear to the extent it goes. Mr. Kochukunju Pillai's motion is in direct contravention of what has already been provided for in Section 42. Apart from that question I am raising it for the consideration of the House whether we shall be justified in disturbing vested rights. Before 1088 the law was quite clear that property given by the father or the husband, as the case may be, is not the exclusive property of the specified donee or the wife alone, but of all their marumakkathayam descendants as well. So much so, it used to be treated as property belonging to the thavazhee or the sub-tarwad consisting of the members who have descended from the donor or the testator, as the case may be, and all the children of the females included in the thavazhee. Such being the case, what I submit to the House is this. Suppose properties have been given before 1088. Even before 1088



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[Mr. K. Paramesvaran Pillai.]

children might have been born to some of the persons who were the children of the donors and also after 1088 many children must have been born to the daughters of the donors contemplated by my friend Mr. Kochukunju Pillai. The case of property forming the subject of any gift made after 1088 is entirely different. That has been specifically provided for in the existing measure. But with respect to the question of property given before the year 1088, they are governed by the law in force before 1088; and, notwithstanding the uneven decisions of the High Court such properties have been treated and dealt with on the footing that they are sub-tarwad properties. Now, to say that such vested rights should be disturbed simply for the sake of uniformity aimed at by my friend Mr. Kochukunju Pillai, is too large an order to be accepted by the House. The uniformity has been contemplated only from the stand-point of the donor and not of the donees. I beg to submit that that is a violation of well-recognised principles of legislation and as such it does not commend itself to me. Hence I beg to oppose the amendment.

MR. K. PARAMESVARAN PILLAI (*Tiruval'a*): I am inclined to accept the amendment proposed by Mr. Kochukunju Pillai for these reasons. I think the object of the amendment is to prevent two different systems of devolution and distribution of property of the same character. The father, who may have been living at the time of Regulation I of 1088 was passed, may have given certain properties to his wife and children before 1088. He might also have made gifts and bequests to them subsequent to 1088. In regard to properties which were the subject matter of gifts made subsequent to Regulation I of 1088, Section 12 of this Regulation will apply. They would be entitled to divide the property and their children would be entitled to succeed. The sons will also be entitled to succeed, whereas, in the case of such properties gifted or bequeathed prior to 1088, they may have to be treated as sub-tarwad properties and enjoyed subject to all the incidence of marumakkathayam tarwad properties. Therefore, in regard to one set of gifts the marumakkathayam law will have to be applied and in regard to the other, the makkathayam system of inheritance provided for in Section 12 of this Regulation will have to be applied.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know whether it would not tend to disturb vested rights?

MR. K. PARAMESVARAN PILLAI (*Tiruval'a*): To some extent, it might.

That appears to me, Sir, to be an anomalous situation, and even at the expense of disturbing some vested rights, it would be advantageous to remove the anomaly and introduce uniformity in legislation. Though we may be in some cases divesting vested rights, the children of the girls do not cease to have any interest in the property. They will have the right to inherit the property of the mother though the share would be diminished to a little extent.

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Does not that give the mother the right to will away the property to the detriment of her children who would otherwise be entitled to inherit it?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Yes, it does. Nevertheless, I am prepared, for the purpose of removing the anomaly, to accept Mr. Kochukunju Pillai's amendment. I think no great hardship will be caused by that. The number of marriages which might have been subsisting in 1088 in regard to which the Section would apply will not be so very large, and it appears to me only just and equitable. There is no reason why it should be denied.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Will the male children of a father who were donees before 1088 be benefited in case their father is dead? I will explain my question. Suppose there are three children to a father of whom two are females and one a male. The male is dead long before the others. The father intends the acquisition for the benefit of the children, both male and female. The children of the male child who is dead before 1088 will not be benefited if this amendment is accepted. Would it not thus be inequitable?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): No. Section 12 will apply to the deceased whose children will have the benefit of the property whether they are males or females.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I have to ask one more question. Mr. Paramesvaran Pillai says that there should be uniformity, as regards marriages that were subsisting before 1088 and those subsisting subsequent to 1088 also. In such a case is there uniformity in regard to time? There may be uniformity of the person. Which is more important—uniformity of person, or uniformity of time?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I do not follow him.

PRESIDENT: He points out the want of uniformity in the dates that determine the devolution of the property.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): There was a law with regard to succession before 1088. The law after 1088 is different. There will be no uniformity. Is it not a violation of the principles of uniformity?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): If we provide for marriages subsisting on the date of the Nayar Regulation, then, I take it, there will be no want of uniformity in either case, because it will not affect the gift or bequest made by a person whose marriage is subsisting on the date of Regulation I of 1088. I therefore support Mr. Kochukunju Pillai's amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I regret, Sir, I have to oppose the amendment. Whether a gift is made before 1088 or after 1088, the parties intended to be

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[Rao Bahadur K. A. Krishna Aiyangar.]

benefited by it should get it. The whole thing depends upon the intention of the donor. Whether he wanted to create a regular sub-tarwad whether the property is to descend as in the ordinary marumakkathayam tarwad or whether he intended the property to descend as makkathayam property, whether his children and his wife are entitled to divide the property, all these questions, as I submitted, form the subject matter of the intention of the donor. If the instrument of gift evidences an intention on the part of the donor, whether the gift took place before 1088 or after 1088, if only the instrument of gift or the testament specifically discloses the intention of the donor, then both under the old law and under the present law, it is only those who were intended by the donor that should get the property. The law has to provide only for cases where the intention is not very clear and Regulation I of 1088 marks an important landmark so far as that question is concerned. In the absence of evidence of the intention of the donor to the contrary, all gifts made before 1088 shall be presumed to have been made with the intention of annexing to it all the incidence of ordinary impartible marumakkathayam tarwad property. With regard to gifts made after 1088 the law presumes, in the absence of evidence of similar intention, that it was intended for the benefit of the donees named in the instrument of gift itself. That is to say, they are entitled to treat it as partible and divisible among the children alone. To make it a bit plainer, let us suppose, a father made a gift to his wife, two daughters and a son. The evidence of his intention is not clear. The ordinary rule was that they could not divide it. It is tarwad property. When the son dies his children would not get any right of inheritance. Then, there are the daughters, the wife and the daughters' children in the regular female line. The property was considered to be regular corporate tarwad property which is incapable of partition and which is subject to the ordinary incidence of marumakkathayam law. Later on, after the passing of Regulation I of 1088, when the father made a gift in favour of the wife, two daughters and a son, all the four were entitled to divide the property absolutely in equal shares *per capita*. But, if the son died, his children would not get anything. We now propose to go a step further to give them the right of inheritance and to treat them as tenants in common and not as joint tenants and confer the rights of inheritance on the descendants of these children whether daughters or boys. Well, the law has to lay down the rule of guidance as to the intention of the donor in the absence of evidence to the contrary in the instrument of gift. If, according to Mr. Kochukunju Pillai, the donor really intended to confine it to his children and not to his children's children, whether it was made before 1088 or after 1088, that is only a question of fact. The law as settled by the Select Committee would not affect their rights at all. On the other hand, if there is no such evidence, prior to 1088 the property would be controlled by the ordinary marumakkathayam law. If it is after 1088 it would proceed along distinct lines of devolution. My friend Mr. Paramesvaran Pillai said that he was prepared to make

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some sacrifice for the sake of uniformity. This appears to me to involve the sacrifice of the fundamental principle of legislation. Let us just see, Sir, what the law at present is with reference to gifts made before 1088. As Mr. P. K. Narayana Pillai pointed out, the present beneficiaries, in the year 1100, of gifts made before 1088 would consist of the son, the daughters, the children of the sons and daughters and so on, and it might include a very large group of persons. According to the law at present, all these persons should be regarded as joint owners of this estate. That character of the gifted property, Mr. Kochukunju Pillai proposes to alter, and he says: 'It shall belong only to the direct children of the donor.' It is rather a very large order, and even for the sake of uniformity or analogy, we cannot afford to disturb vested rights. In fact, while we were dealing with Section 42, Mr. Paramesvaran Pillai stoutly opposed the innovation sought to be introduced into it on this very same ground of the legislature disturbing vested rights, which, as an ordinary rule, the legislature should not do. The legislature can disappoint expectations. It can defeat them as in the general law of succession. But it can never divest rights which have become already vested. They are not contingent rights. As the law stands at present, the children and the daughters' children are all together regarded as owners. My friend proposes to exclude particular members of the family from the ownership of property so that he might secure uniformity. I go a step further. Suppose the marriage is not subsisting on the date on which the new Regulation comes into force. It is only under the Bill that we are now discussing that the sons' heirs come in for a share of the inheritance in makkathayam property. Are they also to have the benefit of this amendment? Then why not say that, with reference to property obtained by Regulation I of 1088 alone, the parties shall have all the rights which are conferred by this Regulation, even though the marriage was not in subsistence on that date? It is a very serious departure from the primary principles of legislation and, as such, we ought not to tolerate it, even though there may be anamolies. As I submitted, life is full of anomalies, and especially so in law. If we make any attempt to override fundamental principles just to get over anomalies, there is no knowing where we may be landed. Therefore, on that very important consideration, whatever we may do, we should not take away vested rights. I therefore oppose the amendment proposed by Mr. Kochukunju Pillai.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I also wish to agree with my friends Messrs. P. K. Narayana Pillai and Krishna Aiyangar. I perfectly appreciate the intention of Mr. Kochukunju Pillai that, when the father gifts property to his children, he does not mind very much whether he was giving to all his children or to grand-children, and that therefore different kinds of incidence should not apply to different sets of properties gifted on different occasions. Certainly we may give some value to that intention if it does not seriously affect vested rights. As has been clearly pointed out, in all cases of gifts made before 1088, all the members of the sub-*tarwad*, the wife,

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[Mr. C. P. Kochukunju Pillai].

the daughter and all the descendants in the female line, were entitled to the property and, I believe, they have been enjoying such property till to-day, and they have been taking advantage in all things connected with the property. All at once it is now suggested that they should be told that the daughters and sons of the father alone were entitled to the property and that the vested interests of the grand-children in the property—which they might even have been enjoying under maintenance arrangements or otherwise—have been divested, and that henceforward, since this Bill has been passed, they have been divested of their vested rights since the law has chosen to confiscate the property. I do not know what offence they have committed to deserve such confiscation of their vested rights.

It does not stop there. As Mr. Krishna Aiyangar pointed out, if there were male children who were dead, it is not the daughters alone that are entitled to it, but also persons who never dreamt of any right to such property, namely, the sons of the children who are no more. You would drive away the daughters' children and introduce for the first time the children of deceased sons, and I do not think that it is doing justice to the intentions of the original donor to introduce the sons of such children for gifts made before 1088 which he never intended should go to the sons of the children but to the children of his daughters. That is not giving respect to the wishes of the donor; that is not giving respect to the vested interests of the persons in possession of the property. And as has been pointed out by my friend, it will be against all principles of legislation to divest vested interests. So I beg to oppose the amendment.

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): In opposing this amendment, Mr. Narayana Pillai mentioned one point, that is, the death of one of the donees before the date on which the Regulation came into force. As for that matter, my answer is that, with regard to the working of all the provisions of this Regulation, we can quote very many instances. But my stand is—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is there any instance of vested interests having been divested?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): To some extent, yes. I can grasp that difficulty of vested interests. But the principle on which I have based my amendment is more important than the difficulty that has now been pointed out.

As for the character of the property just referred to by Mr. Krishna Aiyangar, I might say that the character of makkathayam properties has to be shared only after the death of the parents. But I am speaking of a case when the parents are alive on the date of that Regulation; that is, during the lifetime of the parents, the makkathayam properties have to be dealt with according to the wishes of the father or mother.

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I can point out another difficulty also. Suppose the father is living He has given certain properties to his wife and children just before the date of the Regulation and also after the date of the Regulation. Suppose the father wants to say that a division of these properties has to be effected. If one of the sons of that father turns round and says that "according to this Section I cannot allow a partition," there is this Section in his favour and that goes a long way against the prestige and sentiments of that father. So far as the relations between him and his wife and children are concerned—

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Could he not have avoided that by making his intention specific when he made that gift?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): My amendment is this—"shall, unless a contrary intention is expressed in the instrument of gift or bequest." If there is no provision existing in the instrument of gift to the contrary intention of the donor, I am providing for a partition according to this amendment of mine. Of course, it may be to some extent a vested interest or anything of that sort. That would occur only in rare cases. But the principle upon which I stand in having moved this amendment is more important than the other and hence I press this motion.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Suppose there is property obtained by the children before 1088 from the father who is now alive. It was treated as tarwad property and a mortgage was executed by the children and the children of female children in which this property was treated as tarwad property, or a sale deed was effected. Now, in the original deed the intention of the father did not appear. In that case, what will be the effect of Mr. Kochukunju Pillai's amendment?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): It must go. The property has gone into the hands of a stranger.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): If the sale deed is with regard to a portion of the property on the basis that it belonged to the sub-tarwad and the whole property was mortgaged for a term, in which all these people take part—children and grandchildren—in this case what will be the effect of that amendment?

MR. C. P. KOCHUKUNJU PILLAI (*Kottarakara* cum *Kunnattur*): According to my amendment the remaining property must go to the wife and children.

The amendment was put to the vote of the House and declared lost.

PRESIDENT: I put the question that Clause 23 do form part of the Bill.

The motion was carried and the Clause was added to the Bill.

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[Mr. P. K. Narayana Pillai.]

***Clause 24.***

The following amendment was not moved:—

MR. T. K. VELU PILLAI:

Delete the clause and substitute the following:—

"On the death of a Nayar male, leaving him surviving a widow or children or both and undivided marumakkathayam heirs, the senior male member or, in the absence of a male member, the senior female member among such heirs, shall have the possession of such property as is referred to in Section 12 until a division is effected."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to move an amendment, *i. e.*, to *delete the words "and 22," and add "and" before "18."*

The object of the amendment is very simple. What the clause says is that, in the case of an intestate father, the Nayar wife and children should be in possession of the property and Clause 22 is also included which would mean that, when there are non-Nayar heirs governed by the personal law of the non-Nayar, the wife and children would be in possession of the property. That I do not think is quite fair or reasonable. I am therefore moving for the deletion of the words "and 22" from that Section. For it is likely to bring conflict of interests.

PRESIDENT: Who is to be in possession in such cases?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The personal heirs will be in possession under their own law. In other respects, the existing law does not affect the marumakkathayam law or any other law.

MR. M. RAJA RAJA VARMA (*Devaswom Commissioner*): I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I accept the amendment.

The amendment was accepted by the House.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, my amendment is "*to insert in line 6 "and 23" after 21" omitting the word "and" before "21".*" The effect of that amendment is this. With respect to the properties obtained by the children or the wife, as the case may be, provision is made in Section 23 that the children and wife should be equally entitled to such properties. But with respect to the possession of such properties there is nothing like a provision and, when the matter as to the question of possession is provided for in Clause 24, I would submit that the seniormost member of the group receiving the gift or taking under the testament may be entitled to be in possession of the properties. Therefore, I am submitting that in like manner, the karanavan of the thavazhee according to Sections 16, 17, 19, 20, 21 and 23 shall be entitled to be in possession and management of the estate referred to therein until division is effected.

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : The karanavan of the thavazhee is necessarily one of the donees. That is the reason I suppose why it is omitted.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : The karanavan of the thavazhee would be the seniormost male member in the thavazhee.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : It may consist of people who are not donees. They may be members of the thavazhee.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : But Section 23 says that all the members of the thavazhee would be entitled to that property whether the gift is made to the wife or children.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : You do not have the word "thavazhee" in Section 23.

MR. M. N. PILLAI (*Trivandrum*) : I second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I feel a difficulty in accepting this amendment, because Section 24 says that "in like manner the karanavan of the thavazhee mentioned in Sections 16, 17, 19, 20 and 21" and my friend would add also "and 23." There is no thavazhee in Section 23 and the other Sections refer to cases in which the property descends to a thavazhee. If my friend is very particular about making a special provision, he may have it in Section 23 itself.

PRESIDENT : Section 23 has been passed.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Sir, I do not think that it is necessary to have this amendment, because Section 23 distinctly says that whatever rules apply to the tarwad property will also apply to the seniormost member in management and further, even if there is no provision made here, there is a saving clause in Section 44.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Property in Section 23 is not treated as sub-*tarwad* property. It belongs only to the donees, that is, the wife and children. It relates to cases of gifts made after the year 1088.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : How is it controlled now ?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : The seniormost member in possession of the property will hold it as in the case of a tenancy-in-common.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : The amendment tabled by my friend cannot be admitted as it is. On that question we should agree. Whether it is desirable to make any provision as regards the difficulty contemplated by my friend Mr. P. K. Narayana Pillai, we should consider. A thavazhee may ordinarily consist of the mother and her daughters and daughters' children. The gift may be in favour of a particular daughter. Well,



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[Mr. K. Parameswaran Pillai.]

that property ought to be controlled by herself and her children and not by the seniormost member in that particular thavazhee. My friend sees the reasonableness of my objection and is not prepared to press the amendment as tabled by him. So that, the amendment may be withdrawn and the further question will be whether it is not desirable to make a provision for the management of that property until partition is effected. The ordinary law as regards tenancy-in-common will be that the seniormost member will have the management of it.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is not correct. There is no such presumption with respect to ordinary tenancy-in-common. In marumakkathayam law that presumption occurs.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): He cannot have exclusive possession as against the rest.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Not exclusive possession.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is only a question of some arrangement being made for taking the rents and profits. In any event we may consider that after my friend withdraws the present amendment.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Should there be no provision for the management of the property held under tenancy-in-common?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I must admit that I did not notice the existence of thavazhee occurring in Section 24. But, all the same, I may point out that there is necessity to provide for a situation of this kind. Mr. Krishna Aiyangar says that the eldest member will be in possession of the properties contemplated under Section 23 and that it is the same as in the case of tenancy-in-common. But in that case all the tenants are entitled to be in joint possession of the property. Under these circumstances there is a real necessity to regulate the possession of such properties unless we are prepared to allow all the incidents of tenancy-in-common to be let into the nature of the property obtained by the wife or children from the husband or the father, as the case may be. It is only to prevent that that I was anxious that some sort of provision should be made, and since my friend says that he is prepared to take that aspect of the question—

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): We may include the words "and 23" in the second sentence in Section 24.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Will there not be this difficulty about that? There, you say that the senior adult

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male member among the lineal descendants of the intestate or, in the absence of any male member or if there are more than one, even during the life-time of the sons, the seniormost member may be in possession of the property.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Anyhow it may be noted.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am only leaving it to the House to take note of a lacuna, in view of the existence of this particular difficulty. I beg to withdraw my amendment.

The amendment was, by leave, withdrawn.

PRESIDENT: The question is that Clause 24 as amended do form part of the Bill.

The Clause, as amended, was added to the Bill.

***Clause 45.***

PRESIDENT: There are several identical motions for the deletion of the Clause. Mr. Subba Aiyar will move his amendment first.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): My object in moving the deletion of the Clause is distinct from the object of other persons who have tabled the amendment; that is, if Mr. Narayana Pillai's amendments were carried, Section 22 should not be given retrospective effect. Now there is no necessity for my amendment. But, anyhow, in view of the fact that an understanding has been arrived at, I move for the deletion of the Clause though with a different object.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to second it.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I accept it.

PRESIDENT: I take it that the House accepts Mr. Subba Aiyar's amendment. Then the other amendments that have been tabled lapse.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): With your permission I move—

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): There is my amendment—

PRESIDENT: Then you ought to have opposed the deletion of the Clause which has now been carried.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavagai*): My amendment is entirely a different one.

PRESIDENT: If you want to substitute your amendment for Clause 45, you may move it.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): Sir, I wish that Mr. Paramesvaran Pillai moves his amendment first.

PRESIDENT: Am I to understand that you reserve the right of moving the amendment?

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[Rao Bahadur K. A. Krishna Aiyangar.]

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): Yes, Sir.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I move that the following be read as Clause 45 of the Bill :—

*"Notice of a marriage under this Regulation shall be given by the husband to such authority, in such form and within such time as the Government may prescribe. On failure to give such notice the husband shall be liable to be punished with fine which may extend to one hundred rupees, but such failure shall not invalidate the marriage or affect the legal rights of the parties to or offspring of such marriage:*

*Provided that this Section shall not apply to marriages subsisting on the date of the commencement of this Regulation."*

This Clause has been moved by me in deference to the wishes of my non-Nayar friends. Still, I believe that even in the interest of the Nayar community such a provision is necessary, because we have enacted a law by which bigamy has been made penal and divorce has been restricted. Under the above circumstances, I think, in order to prevent false claims and false prosecutions some kind of evidence of marriage is absolutely necessary. The House will notice that we are making failure to give notice of marriage penal under this Section, We do not invalidate marriage for that reason or make it so as to apply to the existing marriages. If notice of marriage is given, it will be very good evidence for the marriage. Under these circumstances, some such record is necessary to show that marriage has been contracted between parties. So I move this Clause.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): May I know from Mr. Paramesvaran Pillai, in the case of minor husbands, who is to give notice of marriage?

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In such cases the guardians will have to be made liable

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I second the amendment. So far as the ordinary law is concerned the question of minority does not arise at all. The amendment is a wholesome provision intended to ensure proper records being prepared contemporaneously with the marriage itself. With reference to the question raised by Mr. Padmanabha Pillai as to who should give notice of marriage in case the husband is a minor, I beg to say that nowhere is it stated that a man should have completed 18 years for disobeying a particular law of this nature. The Penal Code does not exonerate all minors under 18 from the consequences of their violating provisions of the law.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Except under certain cases.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): There is no chance of a marriage taking place until one completes one's twentieth year. Therefore the question of minority does not at all come here.

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MR. C. SANKARA MENON (*Quilon*): Does not Section 3 contemplate that?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): That is with reference to validating the civil contract which is something different from the ordinary Section.

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN (*Edavakai*): I am very glad to accept the amendment. I wish to know why this is not made applicable to existing marriages as well.

PRESIDENT: Mr. Subba Aiyar will explain.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If necessary, I shall explain. If we make a provision that in the case of existing marriages notice should be given as early as possible, the difficulty is that we have made failure to give notice penal. You cannot impose the penalty for existing marriages for which no notice was required. It will be objectionable to impose penalty in those cases. Even if you give effect to it you will find that, as the Nayar community is nearly five or six lakhs, there will be a very large number of existing marriages, and I do not know whether it is possible for all of them to give notice, so that you could not make it penal. There will also be considerable difficulty in all of them sending the notice of marriage. So, on both these grounds, I object to this Section being made applicable to the existing marriages as well.

MR. C. SANKARA MENON (*Quilon*): Section 3 contemplates marriage of minors. It says:

"Provided that, in conjugal unions so solemnised after the date on which Regulation I of 1088 came into force, in the case of a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age, such conjugal union shall not be deemed to be a valid marriage unless it took place or takes place with the consent of his or her legal guardian."

Therefore, whether the marriage is valid or not, if the contracting parties are minors—in such cases, who is to give notice, whether it is the husband or the legal guardian, is not explained in the amendment. The amendment is also defective in another way. Neither the amendment nor the Regulation does prescribe that Government may make rules.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I suppose my friend is aware that the expression "prescribed" has been defined. It means "prescribed by rules made by Government under this Regulation."

PRESIDENT: What is your suggestion, Mr. Sankara Menon.

MR. C. SANKARA MENON (*Quilon*): I wanted to suggest that, in accordance with the rules framed by Government, the guardian should be made responsible for giving notice in case the contracting parties are minors.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Please suggest an amendment.

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[Mr. Joseph Panjikaran.]

MR. C. SANKARA MENON (*Quilon*): 'By the husband or guardian, in case he is a minor' after the word 'husband.'

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I would rather have it as 'or if he is a minor, his guardian.'

MR. JOSEPH PANJIKARAN (*Shertallai*): May I know who is to take cognizance of the violation of this rule?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In all these cases, it is the Magistrate that ought to do it unless otherwise specifically mentioned.

PRESIDENT: It throws the burden entirely on the guardian.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Why should the guardian be punished? One man marries and another person is to be punished. (*Laughter.*)

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): After all the marriage takes place without the consent of the guardian.

PRESIDENT: There is such a thing as vicarious punishment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is one man to be punished for another man marrying?

MR. C. SANKARA MENON (*Quilon*): So far as the minor is concerned—

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The minor does not consent to it at the time of the marriage so as to give validity to it.

MR. JOSEPH PANJIKARAN (*Shertallai*): Sir, in spite of the fact that there seems to be some sort of agreement on this Section, I think I must oppose it. First of all I asked my friend Mr. Subba Aiyar who it was that should take cognizance of the crime that has now been created. He said that it was the Magistrate. Who is to set the law in motion? No provision for the purpose is made here.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): That will be made in the rules.

MR. JOSEPH PANJIKARAN (*Shertallai*): Then, so far as that is concerned I am satisfied. The next thing is the question of notice. As Mr. Paramesvaran Pillai said, any man can issue a notice. Again, notice is not an essential condition of the marriage. So, many marriages will take place and no notice will be given, because the issue of notice is not made an essential characteristic of the marriage by this Section. So my fear is that in most cases notice will not be given. Subsequently when it is brought to the cognizance of the Magistrate who is to take notice of the crime? When a prosecution is started, the tendency will be to repudiate the marriage and to say that no marriage was contracted simply to escape a criminal conviction. I think that either the Section should be changed in such a way as would not put in the way of the people a temptation of this kind, that is, the

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temptation to repudiate the marriages which might have been legally contracted, or the Section should be dropped entirely.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I have very little more to say in regard to the question of notice. I have already submitted that it is a very wholesome provision for the protection of all parties. Our experience shows that in several cases true marriages have been repudiated and false marriages set up. In order to prevent all these things it is quite necessary to have some kind of evidence in respect of future marriages. Therefore this provision has been made. Mr. Panjikaran seems to think that, because nobody is constituted for the purpose of initiating the prosecution, there is some difficulty. Of course all these things, as I have already said, will be provided for in the rules. In regard to existing marriages, Mr. Subba Aiyar has sufficiently explained the matter.

MR. JOSEPH PANJIKARAN (*Shertallai*): So far as the person who is to start the prosecution is concerned, I am quite satisfied that it will be provided in the rule, but since the issue of notice is not made essential, marriages will take place without notice being given.

PRESIDENT: He has not yet replied fully.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In regard to that matter, what I say is that the Section providing for the notice is quite sufficient, because it prescribes a fine extending to Rs. 100 for failure to give such notice. Therefore we may take it that in order to avoid being convicted and fined the husband will ordinarily give notice. But in spite of that, owing to ignorance of law or other reasons, it may be that notice is not given in some cases and the absence of such notice should not make the children illegitimate and affect their civil rights. There ought to be a kind of safety valve. It is provided therefore that even though notice is not given of the marriage, there should not be any forfeiture of civil rights. In regard to existing marriages, we thought it inexpedient to make any provision, because it may take a very long time before all the provisions of this Regulation are known to the remote country parts of the state. Several marriages might have taken place and they might not have the opportunity to read this particular Section and the absence of such notice in their case would be penal. Therefore it is quite inexpedient to make any provision in regard to existing marriages. In regard to the other question raised by my friend as to whether any special provision should be made for minor husbands, I agree with Mr. Krishna Aiyangar and with Mr. Subba Aiyar in thinking that it is not necessary. But I do not at the same time see any incongruity in providing that, if the husband is a minor, notice should be given by the guardian. There is no question of vicarious responsibility in such a case. For Section 3 says that the marriage of a minor male unless it takes place with the consent of the guardian, is invalid. Notice of invalid marriage is not necessary. But, in order that the marriage may be valid, it must be contracted with the consent of the guardian. Therefore he must be made liable for not giving notice. There is nothing improper in it.

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[Mr. V. Subba Aiyar.]

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): It is not declared to be void. It is invalid.

MR. K. PARMESVARAN PILLAI (*Tiruvalla*): The proviso to Section 3 says:—

"Provided that, in conjugal unions so solemnised after the date on which Regulation I of 1088 came into force, in the case of a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age, such conjugal union shall not be deemed to be a valid marriage unless it took place or takes place with the consent of his or her legal guardian, or unless such conjugal union is adopted and continued after the attainment of eighteen or sixteen years of age, as the case may be, by the party or parties concerned."

Therefore, in order that the marriage may be valid and legal, it must have taken place with the consent of the guardian if the husband is a minor and therefore it is quite proper that he should have the responsibility to give the notice. If on the other hand the marriage takes place without his consent it is open to him to say that the marriage is invalid and he has not given the notice. I do not think there is any real difficulty and there is no real need for any amendment to the Section. Unless Mr. Sankara Menon insists, I think it may go as it is.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Is he agreeable to give the wife permissive rights to give notice? In case the husband does not give notice, he need not be punished, but she may, if she chooses, give notice.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): There is no objection. In fact, I think that, in the first draft I put in this provision. But Mr. Subba Aiyar pointed out that, according to the rules obtaining in Cochin, a notice is to be given by the wife and husband jointly.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): And signed by both.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): In view of that and as the law member agreed that the rules here will provide for the purpose, I thought it unnecessary to introduce it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As for Mr. Panjikaran's objection, I have got a word to say. We considered it and discussed it. We only wanted to give the party an opportunity to secure contemporaneous and reliable evidence. But if that opportunity is not taken advantage of the party should not suffer. This House has passed, I believe, a couple of hours ago, that even in the case of a person who is marrying a second time and commits an offence of bigamy the legitimacy of the children should not be brought into question and the children should be declared legitimate. That being the case, for not giving notice, I do not think a marriage should be declared valid or invalid. Probably later on in the absence of evidence there may be a strong presumption against the party alleging marriage and if it goes to court the case stands upon a couple of witnesses on one side and a couple of witnesses on the other side.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know how this notice is going to be preserved by the authorities?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The Cochin Rule is that it will be published in the *Gazette*. A register will be kept by the Tahsildar in the taluk and it will be simultaneously published in the *Gazette*.

MR. JOSEPH PANJIKARAN (*Shertallai*): Suppose a person makes the publication in the *Gazette* that he has married such and such a girl while as a matter of fact he has not married.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Well, that is open to a suit for defamation. Because what the rules say is that —

PRESIDENT: It is to be signed before a Government official.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I will say what the Cochin Rule is. This notice is signed by both the parties, the officer has to satisfy himself that both the parties have signed it, and then alone it is entered in a register and sent to the *Gazette*. The *Gazette* is a sufficient publication. And as for the fraud, I believe we have plenty of it. Whatever law we may provide there is always the room for fraud and a person will always practise it to get over the law. The courts are there to prevent people ignoring the law and to avoid such contingencies. Even in the case of a registered document it is open to a party to come and say that it is a forgery, and the court can declare that it was admitted by a person who was not entitled to admit it. There are ever so many things like that and we cannot of course ignore the existence of such cases.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Does he contemplate appellate or revisional authorities to rectify the mistakes of the Tahsildar?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No such thing. If he thinks an enquiry is necessary, it will be started.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Who is the appellate authority in case there are mistakes on the part of the Tahsildar or if there is a charge that the Tahsildar did not do his duties properly who is the officer to revise that?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think any provision is necessary for that purpose. If necessary, the rules will provide for it.

PRESIDENT: I will now put this amendment to the vote of the House.

The amendment was put to the vote and carried.

The following amendments were not moved :—

MR. S. KRISHNA AIYAR:
Delete the Clause.

MR. V. KUNJUKRISHNA PILLAI:
Delete the Clause.



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[President.]

MR. M. N. PILLAI:
Delete the Clause.

MR. P. K. NARAYANA PILLAI:
Delete the Clause.

MR. N. RAMAKRISHNA PILLAI:
Delete the Clause.

MR. G. PARAMESVARAN PILLAI:
Delete the Clause.

MR. C. SANKARA MENON:
Delete the Clause.

MR. C. P. KOCHUKUNJU PILLAI:
Delete the Clause;

*or*

Line 4. Substitute the words "if such non-Nayar male and his wife and major children, if any, jointly make" for the words "if such non-Nayar male makes."

MR. L. R. RAJA RAJA VARMA KOILTAMPURAN:
Delete the Clause and substitute the following:—
"The Government, by notification in the *Gazette*, may apply any or all of the provisions of this Regulation to any community or tarwad of non-Nayars following the marumakkathayam law, on an application by more than 75 per cent. of the major members of the Tarwad."

MR. A. GOVINDA MENON:
Delete the existing Clause and substitute the following:—
"The Government shall have power to apply all or any of the provisions of this Regulation to any community following the Marumakkathayam law of inheritance, and shall, simultaneously with the coming into force of this Regulation, apply all its provisions to the Malayala Kshatriya community."

MR. M. R. MADHAVA VARIAR:
Line 4. After the words "non-Nayar male" add the words "and his Nayar wife" and substitute "make" for "makes."
Line 5. Insert the word "joint" between the words "a" and "declaration."
Lines 7, 8 and 9. Delete the sentence beginning with "Notice" and ending with "Procedure."
Line 10. Add the words "and his Nair wife" after the word "male".

PRESIDENT: The question is that the following Clause stand as Clause 45 in the Bill.

*"Notice of a marriage under this Regulation shall be given by the husband to such authority, in such form and within such time as the Government may prescribe. On failure to give such notice the husband shall be liable to be punished with fine which may extend to one hundred rupees, but such failure shall not invalidate the marriage or affect the legal rights of the parties to or offspring of such marriage:*

*Provided that this Section shall not apply to marriages subsisting on the date of the commencement of this Regulation."*

The motion was carried and the Clause was added to the Bill.

***Clause 2.***

The following motion was not moved:—

MR. N. RAMAKRISHNA PILLAI:
Delete Sub-Clause (11).

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PRESIDENT. The question is that Clause 2 as amended do form part of the Bill.

The motion was carried and the Clause was added to the Bill.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I move that the Bill as amended be read again on a future sitting of the Council of which notice shall be given, and in moving so, I take this opportunity of thanking you for all the interest that you have taken and all the other members of the House for the patience they have evinced and the interest shown in the deliberations because it has been a very difficult piece of legislation and has taken a long time for discussion and entailed a lot of work on the Council. On behalf of myself and other members of my community, I beg to thank you and all the members of this Council for all the trouble and time taken to carry this measure through.

PRESIDENT: I am very thankful to you for the kind remarks you have made. I think it was my duty as President of this House to see that, in considering this important piece of legislation affecting a very important community in the country, we should steer clear of all difficulties, and that all sides of the House and the President should full co-operate in giving the measure a satisfactory shape. I trust that t measure is pretty free from defects and that it would conduce to good of the community for which it is intended.

## RESOLUTIONS ON MATTERS OF GENERAL PUBLIC INTEREST.

PRESIDENT: The next item in the agenda is the discussion of resolutions.

MR. N. KUMARAN (*Nominated*): May I know when the House is to disperse?

PRESIDENT. At 5 P. M.

MR. N. KUMARAN (*Nominated*): Will you please extend the time to-day so that we may have an opportunity of hearing Mr. Subba Aiyar on the resolution I am going to move?

PRESIDENT: I think I am voicing the opinion of the House when I say that the sitting has been a very exacting one and that all the members will be glad to go away. So far as I am personally concerned, I may have no objection. But I do not think that there is any use in sitting beyond the usual hour, seeing that the discussion of the resolution is not likely to be closed to-day as you yourself say.

MR. A. HOOGEWERF (*Nominated*): Cannot the time be extended by an hour?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not know whether we shall be able to finish the discussion of such an important resolution in an hour.

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